No. 661

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In the
United States Court of Appeals
For the Seventh Circuit

No. 11954

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

JESSIE MAROY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

Honorable Julius J. Hoffman, Trial Judge.

APPENDIX.

JUL 1 0 1958

R. Eugene Pincham and
Chas. B. Evins,
12 West Garfield Boulevard,
Suite 200-203,
Chicago, Illinois,
Attorneys for Defendant-Appellant,
Jessie Maroy.

The Scheffer Press, Inc.—ANdover 3-6850

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APPENDIX.

JUDGE HOFFMAN

CRIMINAL CALENDAR

The United States vs. Jessie Maroy, 3251 W. Washington St.; Edward Minor, 1941 Warren.

Attorney for U. S.: R. Tieken, U. S. Atty.

Attorney for Defendant: R. Eugene Pincham, 12 W. Garfield Blvd.

Abstract of costs: Fines, $15.00; Clerk (Maroy) $2.00; Marshal, (Minor) $2.00, $0.50; Attorney, $20.00; Commissioner's Court, $.....; Witnesses, $9.92; Total $49.42.

Cash received and disbursed:

Date: 1-14-57; name: R.E.P. Notice Appeal; received: $5.00.

Date: 1-16-57; Treas. C.D.-198; disbursed $5.00.

Proceedings: Vio: Sections 4704(a) and 4705(a), Title 26, U. S. C. and Section 371, T. 18, U.S.C. (Unlawful purchase, sale and concealment of heroin after importation into U.S. and conspiracy of same.)

DOCKET ENTRIES

7-12-56 Filed Indictment (JS-2) $15.00 U. S.
7-12-56 Enter order to issue bench warrant and fix bond at $7,500.00 as to each deft.—Hoffman, J.
7-12-56 Issued bench warrant with copy of Indictment as to each deft. mk.
7-16-56 Filed appr. bond (Minor) $7500
7-16-56 Filed appr. bond $7500.00 (Maroy) s
8-3-56 Filed warrant ret'd exctd. $2.00 (Marcy)
8-3-56 Filed warrant ret'd exctd. (Minor) $2.00
9-27-56 Filed appr. of atty.

9-27-56 Both defts. waive reading of indict & enter pleas of not guilty-cause cont. to Nov. 26, 1956 10 A.M. for trial—Hoffman, J.

9-28-56 Mailed notices. s

12-6-56 On motion of defts. cause reset from Dec. 10, 1956 to Dec. 27, 1956 at 10 A.M. for trial—Hoffman, J.

Mld. ntcs. 12-7-56 H

12-6-56 Filed Notice and Petn. to reset trial date

12-10-56 Filed Subpoena ret. served. 50¢ I

12-27-56 Cause contd. to Jan. 2, 1957 at 10 A.M. for trial—Hoffman, J.

Mld. ntcs. 12-28-56 H

1-2-57 Cause called for trial. On leave of Court first had & obtained deft. Edward Minor with counsel withdraws his plea of not guilty to counts 3, 4, 5, 6, 7, 8, 9, 10 & 11 of the indictment and enters plea of guilty to said counts. Judgment of conviction on the plea. Deft. Minor remanded to custody of Marshal. Jury selected and sworn. Opening statement hrd. for Govt. Defts. waive opening statement. Evid. heard in part for the Govt. Cause contd. to Jan. 3, 1957 at 10 A.M.—Hoffman, J.

Mld. ntcs. 1-3-57 H

1-3-57 Further evidence heard for Govt. Cause contd. to Jan. 4, 1957 at 10 A.M.—Hoffman, J.

Mld. ntcs. 1-4-57 H

1-4-57 Further evid. hrd. for Govt. Govt. rests. Motion of deft. Jessie Maroy made at the close of Govt's. case for judg. of acquittal as to Cts. 1, 2 & 12 denied. Motion of deft. Edw. Minor made at close of Govt's. case for judgment of acquittal in respect to Ct. 12 denied. Evid. hrd. for defts. Defts. rest. Rebuttal evid. hrd. for Govt. Both sides rest. Motion of deft. Jessie

Maroy made at close of all the evid. for judg. of acquittal as to Cts. 1, 2 & 12 denied. Motion of deft. Edward Minor made at the close of all the evidence for judg. of acquittal in re-respect to Ct. 12 denied. Cause contd. to Jan. 7, 1957 at 10 A.M.—Hoffman, J.

Mld. ntcs 1-7-57 H

1-7-57 Argmts. hrd. and concld. Court instructs the jury. Alternates discharged. Marshal sworn. Jury retires to consider its verdict. By argmt. jury to sign, seal and separate. Polling of jury waived—Draft—Hoffman, J.

Mld. ntcs. 1-8-57. H

1-8-57 The jury returns the following verdict: "We, the jury, find the defts. Jessie Maroy and Edward Minor guilty as charged in Counts 1, 2 & 12 of the indictment." Judgment on the verdict. Deft. Maroy remanded to custody of the U. S. Marshal. Cause contd. to Jan. 11, 1957 at 10 A.M. for sentencing. Defts. motion for new trial entd. and contd. to Jan. 11, 1957 at 10:00 A.M.—Hoffman, J.

Mld. ntcs. 1-9-57 H

1-8-57 Filed instructions to the jury. H

1-11-57 Motion for new trial as to both defts. denied. Motion of deft. Minor for probation denied. Motion in arrest of judgment as to both defts. denied. Deft. Maroy committed to custody of Atty. Gen. for imprisonment for 4 years on each of Counts 1, 2 & 12 and fined $500.00 and costs on each of said counts. Fines cumulative. Sentence on Count 2 to run concurrently with sentence on Count 1 and sentence on Count 12 to run consecutively to sentences on Counts 1 and 2. Deft. to stand committed until fines and costs are paid. (Maroy) (JS3)

1-11-57 Deft. Minor committed to custody of the Atty. Gen. for imprisonment for 4 years on each of Counts 1, 2 & 12 for 3 years on each of Counts 3 to 11 both inclusive and fined $500.00 and costs on each of Counts 1 to 12 both inclusive. Fines cumulative. Sentence on Count 2 to run concurrently with Count 1. Sentence on Counts 3, 4 and 5 to run concurrently with each other and consecutively to sentences on Counts 1 and 2. Sentences on Counts 6, 7 & 8 to run concurrently with each other and consecutively to sentences on Counts 3, 4 & 5. Sentences on Counts 9, 10 & 11 to run concurrently with each other and consecutively to sentences on Counts 6, 7 & 8. Sentence on Count 12 to run consecutively to sentences on Counts 9, 10 & 11. Deft. to stand committed until fines and costs are paid. Defts.' motion to fix bond on appeal denied—Draft—Hoffman, J.
Mld. ntcs. 1-14-57 (Minor)(JS3)

1-14-57 Issued 2 c.c. Comm. to U. S. Marshal (Minor)

1-14-57 Issued 2 c.c. Comm. to U. S. Marshal (Maroy)

1-14-57 Filed Notice of election not to commence serving sentence (Maroy)(2)

1-14-57 Filed Notice of Appeal (Maroy)(2) $5.00 pd.

1-14-57 Mailed copy of Notice of Appeal to U. S. Atty., U. S. Marshal and U. S. Court of Appeals H

1-15-57 Mailed Statement of Docket Entries to U.S.C.A. H

1

UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

PRE-FIX TO RECORD

1. This suit was commenced on July 12, 1956.
2. United States of America, is the original party plaintiff; Edward Minor and Jessie Maroy are the original party defendants.
3. The Indictment was filed herein, on July 12, 1956.
4. Bail. The defendants were admitted to bail in the amount of $7500.00 each, on July 16, 1956.
5. The cause came on for trial before a Jury, January 2nd, 3rd, 4th, 7th, 8th and 11th, 1957, the Honorable Judge Julius J. Hoffman, presiding.
6. The Jury returned a verdict finding said defendants guilty as charged in counts 1, 2, and 12 of the Indictment, on January 8th, 1957.
7. Judgment was entered on said finding on January 11th, 1957.
8. This is an appeal for and on behalf of the defendant, Jessie Maroy, taken on January 14, 1957.

R. Eugene Pincham
Attorney for Defendant-Appellant
12 West Garfield Boulevard
DRexel 3-3600
Chicago, Illinois

United States of America }
Northern District of Illinois } ss:

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Docket Entries to and including January 15, 1957, in the case of The United States vs. Jessie Maroy,

et al., No. 56 CR 429, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois this Eleventh day of February, A.D. 1957.

Roy H. Johnson, Clerk.
(Seal) By /s/ Sarah M. Brown,
Deputy Clerk.

2 Pleas had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of January, being the 7th day thereof, in the Year of Our Lord One Thousand Nine Hundred Fifty-Seven and of the Independence of the United States of America, the 181st Year.

Present:

Honorable John P. Barnes, Chief District Judge
Honorable William H. Holly, District Judge
Honorable Philip L. Sullivan, District Judge
Honorable Michael L. Igoe, District Judge
Honorable William J. Campbell, District Judge
Honorable Walter J. La Buy, District Judge
Honorable J. Sam Perry, District Judge
Honorable Win G. Knoch, District Judge
Honorable Julius J. Hoffman, District Judge

Roy H. Johnson, Clerk
William W. Kipp, Sr., Marshal

Friday, January 11, 1957
Court met pursuant to adjournment
Present: Honorable Julius J. Hoffman, Trial Judge

3

UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

UNITED STATES OF AMERICA
v.
JESSIE MAROY and
EDWARD MINOR
} No. 56 CR 429

(Vio.: Sections 4704(a) and 4705(a), Title 26, U.S.C.; Section 174, Title 21, U.S.C. and Section 371, Title 18, U.S.C.)

(Unlawful purchase, sale and concealment of heroin after importation into U. S., and conspiracy of same)

INDICTMENT

(Filed July 12, 1956)

The July 1956 Grand Jury charges:

That on or about May 10, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Jessie Maroy and Edward Minor, defendants herein, did unlawfully and wilfully purchase from a person or persons whose name or names are to the Grand Jurors unknown, a quantity of a certain narcotic drug, to wit, 200 grains of heroin, which said heroin purchased by said defendants as aforesaid, was not then and there in the original stamped package, nor from the original stamped package; in violation of Section 4704(a), Title 26, United States Code.

4 COUNT TWO.

The July 1956 Grand Jury further charges:

That on or about May 10, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Jessie Maroy and Edward Minor, defendants herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a narcotic drug, to wit, 200 grains of heroin, knowing the same to be imported into the United States contrary to law; in violation of Section 174, Title 21, United States Code.

5 COUNT THREE.

The July 1956 Grand Jury further charges:

That on or about May 22, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did unlawfully and wilfully purchase from a person or persons whose name or names are to the Grand Jurors unknown, a quantity of a certain narcotic drug, to wit, 378 grains of heroin, which said heroin purchased by said defendant as aforesaid, was not then and there in the original stamped package, nor from the original stamped package, in violation of Section 4704(a), Title 26, United States Code.

6 COUNT FOUR.

The July 1956 Grand Jury further charges:

That on or about May 22, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did unlawfully and wilfully sell to William Turnbou, a quantity of a certain narcotic drug, to wit, 378 grains of heroin, not in pursuance of a written order from the said William Turnbou on a form issued in blank for that purpose by the Sec-

retary of the Treasury of the United States; in violation of Section 4705(a), Title 26, United States Code.

7 COUNT FIVE.

The July 1956 Grand Jury further charges:

That on or about May 22, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a narcotic drug, to wit, 378 grains of heroin, knowing the same to be imported into the United States contrary to law; in violation of Section 174, Title 21, United States Code.

8 COUNT SIX.

The July 1956 Grand Jury further charges:

That on or about June 29, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did unlawfully and wilfully purchase from a person or persons whose name or names are to the Grand Jurors unknown, a quantity of a certain narcotic drug, to wit, 307 grains of heroin, which said heroin purchased by said defendant as aforesaid, was not then and there in the original stamped package, nor from the original stamped package, in violation of Section 4704(a), Title 26, United States Code.

9 COUNT SEVEN.

The July 1956 Grand Jury further charges:

That on or about June 29, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did unlawfully and wilfully sell to William Turnbou, a quantity of a certain narcotic drug, to wit, 307 grains of heroin, not in pursuance of a

written order from the said William Turnbou on a form issued in blank for that purpose by the Secretary of the Treasury of the United States; in violation of Section 4705(a), Title 26, United States Code.

10 COUNT EIGHT.

The July 1956 Grand Jury further charges:

That on or about June 29, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a narcotic drug, to wit, 307 grains of heroin, knowing the same to be imported into the United States contrary to law; in violation of Section 174, Title 21, United States Code.

11 COUNT NINE.

The July 1956 Grand Jury further charges:

That on or about July 6, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did unlawfully and wilfully purchase from a person or persons whose name or names are to the Grand Jurors unknown, a quantity of a certain narcotic drug, to wit, 305 grains of heroin, which said heroin purchased by said defendant as aforesaid, was not then and there in the original stamped package, nor from the original stamped package; in violation of Section 4704(a), Title 26, United States Code.

12 COUNT TEN.

The July 1956 Grand Jury further charges:

That on or about July 6, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward

Minor, defendant herein, did unlawfully and wilfully sell to William Turnbou, a quantity of a certain narcotic drug, to wit, 305 grains of heroin, not in pursuance of a written order from the said William Turnbou on a form issued in blank for that purpose by the Secretary of the Treasury of the United States; in violation of Section 4705(a), Title 26, United States Code.

13 COUNT ELEVEN.

The July 1956 Grand Jury further charges:

That on or about July 6, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Edward Minor, defendant herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a narcotic drug, to wit, 305 grains of heroin, knowing the same to be imported into the United States contrary to law; in violation of Section 174, Title 21, United States Code.

14 COUNT TWELVE.

Commencing on or about May 10, 1956, and continuing to on or about July 6, 1956, Jessie Maroy and Edward Minor, defendants herein, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, and with divers other persons to the said Grand Jurors unknown, to commit divers offenses against the United States, that is to say, (1) to unlawfully purchase from unknown persons quantities of heroin, a narcotic drug, which said heroin was not in the original stamped package, nor from the original stamped package; (2) to unlawfully sell to William Turnbou, quantities of heroin, a narcotic drug, not in pursuance of a written order from the said William Turnbou on a form

in blank for that purpose by the Secretary of the Treasury of the United States; (2) to unlawfully receive, conceal, buy, and facilitate the transportation and concealment after importation into the United States quantities of heroin, a narcotic drug, knowing the same to be imported into the United States contrary to law; (4) to commit the offenses set forth in the preceding counts of this indict-
15 ment, as in those various counts described and set forth, which said counts are incorporated herein by reference, as though fully set forth and made a part hereof, and in furtherance of which, to effect the object of the said conspiracy, the defendants did and performed the following:

OVERT ACTS.

1. Jessie Maroy and Edward Minor, defendants herein, did do the acts set forth in the preceding counts of this indictment, on the date and in the manner as therein set forth, all of which are incorporated herein by reference, and made a part hereof, as though fully set forth.

2. On May 22, 1956, at Chicago, Illinois, Edward Minor had a conversation with William Turnbou.

3. On June 29, 1956, at Chicago, Illinois, Edward Minor had a conversation with William Turnbou.

4. On July 6, 1956, at Chicago, Illinois, Edward Minor had a conversation with William Turnbou.

In violation of Section 371, Title 18, United States Code.

A TRUE BILL:

/s/ Martin H. Ehler, Foreman.

/s/ R. Tieken United States Attorney

16

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

This day comes the United States by the United States Attorney come also the defendants Jessie Maroy and Ed-

ward Minor in their own proper persons and by their counsel and being arraigned upon the Indictment filed herein against them waive reading thereof and plead not guilty thereto and it is

Ordered that this cause be and the same is hereby continued to November 26, 1956 at 10 A.M. for trial.

17

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

This being the day to which this cause was continued for further trial again comes the United States Attorney come also the defendants in their own proper persons and by their counsel and the Jury heretofore elected, empaneled and sworn herein for the trial of this cause also come and the trial proceeds and at the close of the Government's case the defendant Jessie Maroy by his counsel enters his motion for judgment of acquittal as to counts 1, 2 and 12 of the Indictment which motion is denied and thereupon the defendant Edward Minor by his counsel enters his motion for judgment of acquittal with respect to count 12 of the Indictment which motion is denied and the trial proceeds and at the close of all the evidence the defendant Jessie Maroy by his counsel enters his motion for judgment of acquittal as to counts 1, 2 and 12 which motion is denied and thereupon the defendant Edward Minor by his counsel enters his motion for judgment of acquittal with respect to count 12 which motion is denied and the hour of adjournment having arrived it is

Ordered that the Jury be permitted to separate and
18 that this cause be and the same is hereby continued to January 7, 1957 at 10 A.M. for further trial.

1 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C R 429) * *

Transcript of proceedings had at the hearing of the above-entitled cause before the Hon. Julius J. Hoffman, one of the Judges of the said Court, and a Jury, sitting in his Courtroom in the United States Courthouse, beginning on January 2, 1957, at ten o'clock, a. m.

Appearances:

Hon. Robert Tieken, U. S. Attorney, represented by Mr. J. Grady, Assistant U. S. Attorney, appeared on behalf of the Government.

Mr. R. Eugene Pincham,
appeared on behalf of the Defendants.

---

2 (A jury having been selected and sworn to try the issues, the following proceedings were thereupon had:)

Opening statement on behalf of the Government by Mr. Grady—(Not transcribed.)

Opening statement on behalf of the Defendants waived by Mr. Pincham.

The Court: Ladies and gentlemen, there is so little time before our adjournment period. We will start taking the testimony at two o'clock. I give you the usual direction not to talk with anybody about this case or to permit anybody to speak with you about this until after you have been discharged from service. You will return at two o'clock, and come through that door and go to the jury room.

Two o'clock.

(Thereupon at 12:30 p. m. a recess was taken until 2:00 p. m. of the same day, January 2, 1957.)

3 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 CR 429) * *

Before Judge Hoffman and a jury, January 2, 1957, 2:00 p. m.

The hearing resumed pursuant to recess.

Appearances:

(Same as before.)

The Court: Mr. Grady, will you call your first witness, please.

Mr. Pincham: Motion to exclude witnesses, your Honor.

The Court: All the witnesses in the case of United States of America against Jessie Maroy and Edward Minor, other than the defendants and one person to be designated by the United States Attorney, will please leave the courtroom, if there are any here.

4 Thereupon, the Government to maintain the issues in its behalf, introduced the following evidence, to wit:

JOHN A. GJERTSEN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grady.

Q. State your name, sir.

A. My name is John A. Gjertsen.

Q. Spell the last name.

A. G-j-e-r-t-s-e-n.

Q. What is your occupation, Mr. Gjertsen?

A. I am a narcotics agent in the Treasury Department, Federal Bureau of Narcotics.

Q. How long have you held that position?

A. Approximately seven years.

Q. During the months of May, June and July, 1956, were you attached to the Chicago office of the Bureau of Narcotics.

A. I was.

Q. Do you know the defendants in this case, Jessie Maroy, and Edward Minor?

A. Yes, I do.

Q. Do you see them in the courtroom here today?

A. Yes.

Q. Point them out, please.

A. Jessie Maroy is the first individual sitting to the right of his attorney, Mr. Pincham; and Edward Minor is the second individual seated next to Jessie Maroy.

Mr. Grady: If the Court please, may the record show that the witness has identified the defendants.

The Court: Yes, the record may show that the witness has identified the defendants in open Court.

By Mr. Grady:

Q. Mr. Gjersten, calling your attention to the 10th of May, 1956, were you on duty as a Federal narcotics agent on that day?

A. Yes, sir, I was.

Q. Calling your attention to the afternoon of May 10th 1956, where were you at that time, if you recall?

A. I was in the vicinity of Hoyne and Madison Streets.

Q. Who was with you, if anyone?

A. I was with Thomas L. Cross.

Q. What happened, if anything, on that afternoon.

Mr. Pincham: I object to the form of the question.

The Court: What is wrong with it?

Mr. Grady: The question is, what happened, if anything.

The Court: How do you want to improve the question, and I will try to improve it for you, Mr. Pincham.

Mr. Pincham: The question is general, Judge.

The Court: Well, I take it he will get special after he gets an answer to that one. I will overrule the objection.
By The Witness:

A. I was in the vicinity of Hoyne and Madison Streets on the afternoon of May 10, 1956 in company of a special employee by the name of Thomas L. Cross.
By Mr. Grady:

Q. What do you mean by special employee?

A. A special employee is one who assists the Government in apprehending violators.

Q. Proceed.

A. On this afternoon, we frequented the vicinity of Hoyne and Madison Streets.

Mr. Pincham: I object to the form of the answer, he frequented. The witness is stating a conclusion.

The Court: Perhaps that is an unfortunate choice of words. I will strike that part of the answer, "We frequented Hoyne and Madison Streets." Be more precise, Mr. Gjertsen, in telling what you did.
By The Witness:

A. I and Thomas L. Cross remained in the vicinity of Hoyne and Madison Streets. We were walking up and down on the east side—on the north side of Madison Street, and then crossing back to the South side, and then crossing over to—again to the corner of Hoyne and Madison. We remained in the vicinity,—
By Mr. Grady:

Q. What time of the day was this, Mr. Gjertsen, if you recall?

A. This was about 4:00 o'clock, between 3:30 and 4:00 o'clock. We still remained in the vicinity loitering, you may say we were loitering in this vicinity until such time that we observed a 1956 Pontiac sedan which bore license plates No. 2713054. This vehicle—

Q. Is that an Illinois license plate?

A. That is an Illinois 1956 plate. This vehicle was being driven by Jessie Maroy with Edward Minor as a passenger. The car parked just off the block at Hoyne and Madison Streets, and both individuals within the car dismounted on the south side of the street. Myself
8 and Thomas L. Cross were on the north side of the street in the middle of the block. Jessie Maroy observed Thomas L. Cross.

Mr. Pincham: I object to that, your Honor.

The Court: Yes, I strike the words "Jessie Maroy observed," and so forth, and instruct the jury to disregard it. You tell what you observed.

By The Witness:

A. I observed Jessie Maroy to wave to Thomas L. Cross, and he then crossed the street on a diagnonal and approached—

By Mr. Grady:

Q. Who do you mean by "he"?

A. Jessie Maroy and Edward Minor crossed Madison Street on a diagonal and approached Thomas L. Cross and myself.

Q. What happened after that, if anything?

A. Upon their approaching us, Thomas L. Cross engaged Jessie Maroy in conversation.

Q. In your presence?

A. In my presence, right.

Q. Will you state what Jessie Maroy said to Thomas Cross?

A. Jessie Maroy said, "Where have you been? I haven't seen you on the streets lately."

He said, "Since my wife died—"

Q. Who said?

A. Jessie Maroy said—I mean Thomas L. Cross said, "Since my wife died, I have not been coming to the
9 West Side. I found me an apartment on the South

Side of Chicago and I find it a little difficult to come all the way over to the West Side."

Thomas L. Cross then stated to Jessie Maroy, "I brought my man with me and I want to do some business."

Jessie Maroy then took him outside of my hearing, about six feet distance from me.

Q. Took Thomas Cross?

A. Thomas Cross outside of my presence. I observed them to be in conversation. Then they returned to my presence, and I came up to Jessie Maroy and Thomas L. Cross introduced me to Jessie Maroy. He said that I was his man Johnny, and I then shook hands with Jessie and I shook hands with Edward Minor.

Q. What happened after that?

A. I stated to Maroy that I wished to do some business. In terminology—I was in an undercover capacity.

Mr. Pincham: I object, your Honor.

The Court: "In terminology, I was in an undercover capacity," those words may go out and the jury will disregard them.

The Witness: In my capacity as—

By Mr. Grady:

Q. Mr. Gjertsen, you stated you have been a Federal narcotics agent approximately seven years.

A. That is correct.

Q. I note you stated you wanted to do some business at that time?

A. Yes, sir.

Q. Do these words "do some business" in your experience as a Federal narcotics agent have a particular meaning peculiar to the narcotics traffic?

Mr. Pincham: Objection, if the Court please.

The Court: I will let him answer. The answer is yes or no.

By The Witness:

A. Yes.

By Mr. Grady:

Q. And in your experience, what do those words mean?

A. It means, "I wish to purchase some heroin."

Q. Proceed.

A. I told Jessie I wanted to do some business. He said, "I don't handle the business, and I won't deal with a gray. If you want to do business, you deal with my man."

Q. What was that?

A. "I won't deal with a gray."

Q. Again relying on your experience, if you know, can you state what term means?

11 A. Yes, gray means a Caucasian.

Mr. Pincham: Just a minute, Mr. Witness. I am objecting if the Court please. What it meant to him is immaterial. What did it mean to the defendants.

Mr. Grady: I am asking whether it had an established meaning.

The Court: I will let him tell.

The Witness: It means a Caucasian, a white man.

By Mr. Grady:

Q. All right, sir. Go ahead.

A. He said he would not deal with a gray, and further that his man, if I wished to do business, I could do business with his man, indicating Edward Minor.

Mr. Pincham: I am objecting to indicating Edward Minor. That is a conclusion.

The Court: What do you mean when you say indicating, Mr. Witness?

By The Witness:

A. With his hand. He said, "My man, Edward Minor."

The Court: Minor was standing there?

The Witness: Yes.

The Court: And he pointed to Minor?

12 The Witness: Yes, "My man Edward Minor."

By Mr. Grady:

Q. Then what happened?

A. We then left—Jessie Maroy then left my company and he proceeded up the block to an all-night food store. Edward Minor and myself and Thomas L. Cross walked down to Hoyne and Madison Streets. At this time Thomas Cross told Edward Minor—

Mr. Pincham: I am objecting to that on behalf of Jessie Maroy, what was stated out of the presence of the defendant Jessie Maroy.

By Mr. Grady:

Q. Were you in the presence of the defendant Minor?

A. Yes, sir, I was.

Q. And the witness Thomas Cross?

The Court: Mr. Cross was not a witness. You characterize Mr. Cross as a witness.

Mr. Grady: Oh, excuse me.

The Court: He is not a witness yet. We don't know whether he will be or not.

By Mr. Grady:

Q. This conversation took place in your presence, is that right?

A. Yes, and in the presence of Edward Minor, the other defendant.

13 The Court: All right, go ahead.

By The Witness:

A. He said, "I want to buy half a piece."

Mr. Pincham: Judge, I—

The Court: Who said that?

The Witness: Thomas L. Cross stated to Edward Minor.

The Court: In your presence?

The Witness: In my presence.

The Court: And in the presence of the defendant?

The Witness: In the presence of the defendant Edward Minor.

The Court: Who else?

The Witness: Those were the three present. Jessie Maroy was not present. He had left and had gone up to the all-night food store.

Mr. Grady: I point out, your Honor, there is a conspiracy count in the indictment.

Mr. Pincham: It is inadmissible, Judge, certainly, as to Counts 1 and 2 as to Maroy.

The Court: Do you think, Mr. Grady, you have established a prima facie case?

14 Mr. Grady: I think I have, your Honor. Perhaps we had better argue this—

The Court: I will let it go in subject to your assurance that you will connect it up.

Mr. Grady: Well,—

The Court: I think at this point—

Mr. Grady: I ought to tell the Court—

The Court: What is the name of the defendant who was not present?

The Witness: Jessie Maroy.

The Court: I instruct the jury at this point that this conversation, alleged conversation which the witness is about to relate, is not to be considered as to the defendant Jessie Maroy, and only as to the defendant Minor. That is without prejudice to your right to get it in later, if you can, once a prima facie case has been established of a conspiracy.

The Witness: Edward Minor then stated, "You go down to the bar located on Levitt and Madison Street, and you wait for me to come—you await my arrival there."

Thomas L. Cross and myself went to the B&B bar located at Levitt and Madison Streets, and entered the bar. We purchased a beer, and consumed the beer, and

15 in about 20 minutes, at the rear entrance to the bar, so that you can picture this, I was seated at the rear table with Thomas L. Cross, at the rear table of this beer establishment.

Behind my table was a door. After waiting about 20 minutes, Edward Minor entered the establishment and he acknowledged by nodding his head our presence in the bar.

By Mr. Grady:

Q. Mr. Gjertsen, going back for a moment to the time before you entered the bar, will you state whether or not you had determined what personal effects the defendant Thomas Cross had on his person?

A. Yes. As is customary,—

Mr. Pincham: I object to the characterization.

The Court: "As is customary", those words may go out and the jury will disregard them. We don't want to know what is customary. Just anwser the question.

By The Witness:

A. I searched the special employee Thomas L. Cross, completely, I searched for personal effects, his money, and removed all personal effects from his person and had him remain in my presence at all times.

By Mr. Grady:

Q. And in the course of that search, will you state
16 whether or not you found a package containing a white powdery substance?

A. No, he had no white package on his person.

Q. All right, proceed.

A. He had a handkerchief and a wallet, and I returned to him the wallet and kept the handkerchief.

Seated in the bar, Edward Minor entered through the back door of the establishment, acknowledged our presence by nodding his head, and he went to the bar which was a distance of about five feet away from my immediate presence.

I counted out $60 in official Government advanced funds. I counted this out to Thomas L. Cross. Thomas took the money and walked over to Edward Minor, two steps over to Edward Minor and handed Edward Minor the $60. Edward Minor reached into his right pocket, his right coat pocket, and extracted a package which he handed to Thomas L. Cross.

Thomas Cross then stated: "For future business, how can I get in touch with you?"

Mr. Pincham: Your Honor, I am objecting again to this conversation as to the defendant Maroy.

The Court: Well, he has not been asked to give a conversation, so I will strike the conversation. You may put a question, Mr. Grady. I will strike the last answer of the witness and direct the jury to disregard it. I don't perceive that the conversation was in response to any question. You may ask any question you like, Mr. Grady.

By Mr. Grady:

Q. Did you overhear any conversation at this time between the defendant Edward Minor and special employee Thomas Cross?

A. Yes, I did.

Q. That conversation was within your hearing, is that right?

A. Yes.

Q. Will you state what that conversation was?

Mr. Pincham: I object to the conversation as to the defendant Maroy.

The Court: As to the defendant Maroy at this time I direct the jury not to consider the conversation, but to consider the conversation only as to the defendant Minor.

By The Witness:

A. Thomas L. Cross asked Edward Minor, "For future business, where can I get in touch with you?"

Edward Minor said, "You can call me on the telephone, and here is my number."

18 He extracted—I observed him extract a card, a Pontiac dealer's business card, and he recited a telephone number. This telephone number was copied down by the special employee, Thomas L. Cross, and written on the back of this card.

Edward Minor then left the tavern. He left out of the back door. Thomas L. Cross came over to my presence, and he and I left the bar together, and we observed Minor to enter a 1949 green Plymouth sedan bearing license No. 1941999. He left the vicinity, and Thomas L. Cross and myself walked back to Hoyne and Madison Streets, and entered the Government vehicle, a 1955 Mercury, and left the vicinity.

I dropped off Thomas L. Cross in the Chicago Loop and I proceeded to the office of the Bureau of Narcotics, 817 New Post Office Building.

By Mr. Grady:

Q. What did you do after you got there, if anything?

A. I entered the building and proceeded to my office. I met with Agent David Spillane. At this time I displayed the package which I had obtained from Thomas L. Cross. It contained a whitepowder. I opened the package and conducted a field test, with a markee reagent which is a chemical test, and I extracted some

19 of the powder and placed it in the tube, and the immediate reaction was positive. The fluid turned purple, which is an indication that the contents of the package was an opium derivative. I then processed the package, initialed it and sealed it in a lock seal envelope in preparation for the delivery to the United States chemist.

I weighed this evidence, and I found it to contain 198.5 grains of heroin hydrochloride.

Mr. Grady: Mr. Reporter, will you mark this Government's Exhibit 1 for identification, this envelope here and mark the envelope stapled to it Government's Exhibit No. 2 for identification.

(Said exhibit marked Government's Exhibits Nos. 1 and 2 for identification.)

Mr. Grady: If the Court please, may the record show that I am now breaking the seal, two seals on the back of Government's Exhibit No. 2 for identification.

The Court: The record may so indicate.

The Witness: I could further testify—

Mr. Pincham: I object. There is no question pending.

The Court: There is no question pending.

The Witness: I am sorry; as to my attire, how I was dressed.

Mr. Pincham: I move that that be stricken from the record.

The Court: Yes, it may go out, and the jury will disregard it.

The Witness: If you need any help, I will give you my pocket knife.

Mr. Grady: I have never seen one that is this hard to open.

May the record also show that I am removing from Government's Exhibit No. 2 a piece of newspaper which I will ask to have marked Government's Exhibit 3 for identification.

The Court: The record may so indicate.

(Said exhibit marked Government's Exhibit 3 for identification.)

By Mr. Grady:

Q. Mrs. Gjertsen, I show you Government's Exhibit No. 3 for identification and ask you whether you know what that is?

A. Yes, this is the original wrapping which contained the white powder, on which I performed a field test analysis, and found it to contain an opium derivative, and white powdery substance, heroin hydrochloride.

21 Q. Is this Government's Exhibit No. 3 for identification the package which you received from Thomas Cross?

A. Yes, sir.

Q. And which you observed Thomas Cross to receive from the defendant Minor, Edward Minor?

A. Yes, and I identify it by my initials, JAG.

Q. Is a date also on there?

A. It is dated 5-10-56.

Mr. Grady: May the record also show I am removing from Government's Exhibit No. 2 for identification a small envelope, a glassene envelope containing a white powdery substance which I will ask to have marked Government's Exhibit No. 4 for identification.

The Court: The record may so indicate.

(Said exhibit marked Government's Exhibit No. 4 for identification.)

By Mr. Grady:

Q. Mr. Gjertsen, I show you Government's Exhibit No. 4 for identification and ask you if you have seen that before.

A. This is the envelope—

Mr. Pincham: I am objecting that the answer is not responsive.

The Court: The answer to the question is yes or no, Mr. Witness.

22 By The Witness:

A. Yes, I have.

By Mr. Grady:

Q. Will you tell us what that is.

A. That is a container of white powdery substance, on which I made a field test.

Mr. Pincham: I object to the latter part, and move it be stricken.

The Court: Read the question.

(Last question read.)

The Court: Just state what it is, if you know.

By The Witness:

A. It is heroin hydrochloride.

By Mr. Grady:

Q. Do you know what the package contains?

A. Government's Exhibit 4?

Q. Government's Exhibit 4 is a package. Will you state if you know what Government's Exhibit 4 for identification contains.

A. It contains heroin hydrochloride.

Q. Is that the same heroin hydrochloride which was in Government's Exhibit No. 3 for identification?

A. Yes, it is.

Q. Which you received from Thomas Cross?

23 A. Yes.

Q. Are your initials on Government's Exhibit No. 4?

A. No, sir, the chemist's number, 49692.

Mr. Pincham: I object to that, your Honor.

The Court: The answer may be stricken. Read the question.

(Last question read.)

The Court: They are not on there.

The Witness: No.

By Mr. Grady:

Q. Mr. Gjertsen, when you received Government's Exhibit No. 3 for identification from Thomas Cross, did it have any Federal tax stamps on it?

A. There were no tax stamps on the package.

Q. And at the time you observed the transaction between Thomas Cross and Edward Minor, did you see a purchase order form given by Thomas Cross to Edward Minor?

A. There was no transfer of a purchase order form.

Q. Did you yourself give Edward Minor a form which is prescribed by the Secretary of the Treasury?

A. I did not.

Q. Mr. Gjertsen, all you have testified to with reference to this man's actions, did that take place in the City of Chicago and State of Illinois?

A. Yes, sir, it did.

24 Q. Mr. Gjertsen, I show you Government's Exhibit No. 1 for identification and ask you whether you have seen that before?

A. Yes.

Q. Will you state what it is?

A. This is a Government lock seal envelope with the chemist's number, 49692, which coincides with chemist's No. .....

Mr. Pincham: Objection.

Mr. Grady: Will you state what it is.

The Court: A Government lock seal envelope.

The Witness: Yes.

The Court: All right, you have answered the question.

By Mr. Grady:

Q. Will you state the circumstances under which you first saw that envelope.

A. This envelope I made out in my own handwriting, which lists the defendants, the place of purchase, the date, the time, all in my handwriting.

Q. What, if anything, did you do with Government's Exhibit No. 1 for identification?

A. I lock-sealed it, and placed my signature on the back in the presence of Agent David Spillane, and I delivered it to the United States chemist.

25 Q. Was there anything inside Government's Exhibit No. 1 for identification when you did deliver it?

A. Yes, the package purchased from Edward Minor and Jessie Maroy.

Mr. Pincham: I object to that, and move that it be stricken from the record.

The Court: Yes, it may go out. Read the question.

(Last question read.)

The Court: Try to listen carefully and just answer only the question then probably Mr. Pincham won't object. And we will move along here faster.

The Witness: I think he will object to any statement I make about Jessie Maroy.

Mr. Pincham: I object to that, and move that it be stricken, and ask the jury to disregard it.

The Court: No, I don't think he will. I do strike what the witness said, and I direct the jury to disregard it.

Read the question to the witness.

(Last question read.)

By The Witness:

A. Yes, it contained a package.

26 The Court: The answer is yes. You may ask another question.

By Mr. Grady:

Q. What was inside Government's Exhibit No. 1 when you delivered it to the United States chemist?

A. It was a package of evidence purchased from Jessie Maroy and Edward Minor.

Mr. Pincham: I object to that, and move the answer be stricken, and the jury instructed to disregard it.

The Court: It may go out, and the jury is directed to disregard it.

By Mr. Grady:

Q. Are you referring to Government's Exhibit No. 4 for identification?

A. Yes, sir.

Q. Was that inside Government's Exhibit No. 1?

A. Yes, sir.

Q. And Government's Exhibit No. 3 for identification?

A. Yes, sir.

Q. That was also inside Government's Exhibit No. 1?

A. Yes.

Q. And Government's Exhibit No. 1 was in a sealed condition when you presented it to the chemist?

A. Yes.

27 Q. Mr. Gjertsen, calling your attention to May 22, 1956, did you see either of the defendants on that day?

A. Yes, I did.

Q. Will you tell the circumstances under which you saw them?

Mr. Pincham: I object to the form of the question.

The Court: Well, you asked him whether he saw either of them.

Mr. Grady: Yes.

By Mr. Grady:

Q. Which of the defendants did you see?

A. I saw both defendants.

Q. Where was it that you saw them? Where were you when you saw them?

A. I was located in the vicinity of Sacramento Street, between Warren and Washington, concealed in an undercover jeep.

Q. Was there anyone else with you?

A. Yes, sir, Agent David Spillane.

Q. About what time of day was it, do you recall?

A. This was about six o'clock in the evening.

Q. Will you state what you saw, if anything.

A. On May 22, 1956, I was located at a point of surveillance on Sacramento Street.

28 Mr. Pincham: I object as not being responsive. The question is, what did you see.

The Witness: What did I see?

The Court: Suppose I direct the witness, Mr. Pincham.

Mr. Pincham: I beg your pardon, your Honor.

The Court: Strike the answer of the witness, Mr. Reporter, and the jury will disregard it. Now, read the question to the witness, and don't use any of these terms we don't understand. That is one of the things counsel objects to. Just tell it in simple words. You know we are not in this business. We don't understand.

The Witness: I appreciate that.

The Court: Read the question to the witness.

(Last question read.)

By The Witness:

A. I saw the defendant Edward Minor parked, a 1956 Pontiac Catalina two-tone brown and tan, bearing license No. 2713054, in the vicinity of Sacramento Street on Warren, just off of Sacramento.

Q. Was that the same automobile you had seen on May 10?

A. This was the same vehicle.

Q. What else did you see?

29 A. He dismounted from the vehicle and walked on Sacramento Street to an apartment, a first-floor apartment located on Sacramento between Washington and Warren, and he entered the building. After about ten minutes out of my sight, he came out of the building, and he proceeded south on Sacramento Street to an east and west alley which runs between Albany and Sacramento. It is bounded by Albany, Sacramento, Washington and Warren Streets. It is an east and west alley.

He entered the alley and joined company with Agent William Turnbou and Thomas L. Cross. He then left the presence of the agent—

Q. How long was he there in the alley, do you recall?

A. What?

Q. How long was the defendant Minor in the alley, if you recall?

A. Two minutes at the most. He then left the alley and returned to the 1956 Pontiac, bearing Illinois 1956 plate No. 2713054. He started up the car and proceeded east on Warren Boulevard one block, and turned right and went to Madison Street. He then drove on Madison Street east to Hoyne, Madison and Hoyne, and parked the vehicle. He got out of the car and walked diagonally across the street to Jessie Maroy, at which time there was a meeting of the hands. Their hands came together. They stood in conversation, then the two in company, Jessie Maroy and Edward Minor returned to the 1956 Pontiac bearing license plate No. .....

Q. The same plate?

A. The same license plate, same car, and they left the vicinity. I then left the vicinity and proceeded to the office of the Bureau of Narcotics, 817 New Post Office Building, at which time I met with Agent William Turnbou, at which time he turned over to me a package which he had purchased.

Q. Well, never mind the package. Was Agent Spillane with you during this entire period you testified about?

A. Yes.

Q. What, if anything, did you do with that package?

A. I accepted the package from Agent William Turnbou, opened it and conducted a field test with a markee reagent. I broke open the test tube, inserted some of the powder from this package.

Q. You say there was powder inside of this package?

A. Yes. There was 378.3 grains of heroin within the package. I conducted a field test which went immediately positive. I then weighed this evidence, and sealed it in a lock seal envelope in the presence of Agent David Spillane and put my initials on it and filled out the required infor-

mation, and it remained in my custody until such time
31 as I delivered it personally to the United States chemist.

Mr. Grady: Mr. Reporter, will you mark this envelope Government's Exhibit 5 for identification.

(Said exhibit marked Government's Exhibit No. 5 for identification.)

Mr. Grady: And will you mark the envelope attached to Government's Exhibit 5 for identification as No. 6 for identification.

(Said document marked Government's Exhibit No. 6 for identification.)

Mr. Grady: If the Court please, may the record show I am going to make another attempt to open one of these—

The Court: Is that Exhibit 5?

Mr. Grady: Government's Exhibit 6 for identification. May the record show I break the seal at the top edge.

The Court: Let the record so indicate.

By Mr. Grady:

Q. And that I am removing from Government's Exhibit No. 6 for identification a piece of newspaper which I will ask to have marked Government's Exhibit 7 for identification.

32 (Said document marked Government's Exhibit No. 7 for identification.)

Mr. Grady: And a small glassene envelope containing a white powdery substance which I will ask to have marked Government's Exhibit No. 8 for identification.

(Said document marked Government's Exhibit No. 8 for identification.)

By Mr. Grady:

Q. Mr. Gjertsen, I show you Government's Exhibit No. 7 for identification and ask you whether you have ever seen that before.

A. Yes.

Q. Will you state what it is.

A. This is the outside wrapper of the white powdery substance which bears my initials, JAG, dated May 22, 1956. This is the container which I placed in Government lock seal envelope.

Q. Is that the container which you received from William Turnbou?

A. Yes, it is.

Q. I show you Government's Exhibit No. 8 for identification and ask you if you have ever seen that before?

A. Yes, I have.

Q. Do you know what that is?

33 A. Yes, that is a chemist's envelope that contains a white powder, heroin hydrochloride.

Q. Was this the substance that was in Government's Exhibit 7 for identification?

A. Yes, it is.

Q. Does this envelope bear your initials, Government's Exhibit No. 8?

A. It does not.

Q. I show you Government's Exhibit No. 5 for identification and ask you if you have seen that before.

A. Yes, I made out this envelope. It is a Government lock seal envelope, Government's Exhibit No. 3, bearing chemist's No. 49793 in my handwriting.

Q. Did you do anything with this envelope?

A. Yes.

Q. Government's Exhibit No. 5?

A. I placed the evidence in the envelope and lock-sealed it.

Q. By the evidence, you are referring to Government's Exhibit 7 and 8?

A. That is correct.

Q. Then what did you do with Government's Exhibit No. 5 after you had placed Government's Exhibits 7 and 8 inside it?

34 A. I delivered it to the United States chemist.

Q. Government's Exhibit No. 6 for identification, do you know what that is?

A. Yes, that is a chemist's envelope.

Q. Have you seen this before?

A. No, I haven't. This is the one bearing my initials.

Q. Mr. Gjertsen, I call your attention to July 5, 1956. Did you see either of the defendants or both of them on that day?

A. Yes, I saw both defendants, Jessie Maroy and Edward Minor.

Q. Will you state where you saw them.

A. Coming out of the buillding.

The Court: Let me have that date again, please, Mr. Witness.

The Witness: July 5th, 1956.

The Court: All right, go ahead.

The Witness: Leaving the building located at 110 North Wood Street.

By Mr. Grady:

Q. Was there anyone else with you when you made this observation?

A. No, I was alone.

Q. What, if anything, did you see the defendants 35 do when they left that building?

A. I was holding a surveillance on this building at 111 North Wood Street—

Mr. Pincham: Just a minute. I object to that and move that the answer be stricken.

The Court: "I was holding a surveillance," those words may go out and the jury will disregard them. Just tell us in simple words what you did.

The Witness: I was observing the building from Government's automobile, official car N-2162, a radio car.

I observed Edward Minor and Jessie Maroy to leave the building and enter a 1956 Chevrolet automobile and leave the vicinity and proceed to Madison Street one block east of Hoyne and Madison. Jessie Maroy was driving the car, and Edward Minor was a passenger on his right. Edward Minor got out of the car and Jessie Maroy proceeded west on Madison Street, and I observed Edward Minor to walk on foot and go to the corner of Hoyne and Madison Streets and meet with Narcotics Agent William Turnbou.

By Mr. Grady:

Q. Then did you see anything else?

36 A. Yes.

Q. What did you see.

A. Jessie Maroy made a pass in the vicinity, and left the vicinity.

Q. What do you mean by made a pass?

A. He passed by the meeting of Edward Minor and Narcotic Agent William Turnbou.

Q. You mean this was after the time you had driven up originally?

A. No, he proceeded in the car and Edward Minor went on foot.

Q. I see.

A. He passed also the corner of Hoyne and Madison Streets.

Q. Jessie Maroy did?

A. Yes. So to continue the observation—

Mr. Pincham: Objection to that, if the Court please.

The Court: Just tell what you did.

The Witness: All right. I proceeded up to Hoyne and Madison Streets, and in protection of my fellow narcotic agent, I parked in the vicinity.

Mr. Pincham: I object to that, if the Court please.

The Court: All you have to do is tell me what you

don't like about it and I will rule. Strike the last
37 answer of the witness. Read the question to the witness, and listen carefully to the question. You know I didn't write these rules. In order to save time, will you put the question again.

By Mr. Grady:

Q. What did you see after that, Mr. Gjertsen, if anything?

A. After that I observed Edward Minor and Narcotics Agent William Turnbou enter a 1949 green Plymouth bearing license No. 1941999, and leave the vicinity together. I proceeded to Washington and Hoyne Streets and parked in the rear of Government's vehicle belonging to Agent William Turnbou at the corner of Hoyne and Washington Streets. I observed Agent William Turnbou to arrive at the restaurant and enter the restaurant. I remained at that location, at which time Agent Turnbou then left this restaurant and joined Edward Minor and left the neighborhood. I remained at that location.

Q. How long did you wait there?

A. I waited until July 6, after midnight, 12:15 a. m. of July 6.

Q. Did you see anything?

A. Yes. I then observed Agent Turnbou to re-
38 turn to this corner in a taxicab, and get out of the taxicab and enter Government vehicle belonging to Agent William Turnbou and drive to the office of the Bureau of Narcotics, 817 New Post Office Building.

Q. You followed him there in your car?

A. I followed him there, and we went up to the office, at which time he turned over a package to me. I opened this package and conducted a field test which was positive, and processed and weighed the evidence and placed it in a lock seal envelope, and it remained

in my custody until such time that I personally delivered it to the United States chemist.

Mr. Grady: Will you mark this Government's Exhibit 9 for identification.

(Said document marked Government's Exhibit No. 9 for identification.

Mr. Grady: Will you mark the envelope which is attached to Government's Exhibit 9 as Government's Exhibit 10 for identification.

(Said exhibit marked Government's Exhibit No. 10 for identification.)

Mr. Grady: If the Court please, may the record show that I am breaking the seal on Government's Exhibit No. 10 for identification.

39 The Court: It may so indicate.

Mr. Grady: And that I am removing from Government's Exhibit No. 10 for identification a smaller paper envelope which I will ask to have marked Government's Exhibit No. 11 for identification.

The Court: Let the record show that.

(Said exhibit marked Government's Exhibit No. 11 for identification.)

By Mr. Grady:

Q. Mr. Gjertsen, I show you Government's Exhibit 11 for identification. Have you ever seen that before?

A. Yes, I have.

Q. Do you know what it is?

A. It is a package which I obtained from Narcotics Agent William Turnbou at 12:15 a. m. on July 6, 1956. I opened this package and conducted—I weighed the contents which was 365⅓ grains of heroin hydrochloride. I conducted a field test, and found this evidence to be almost pure heroin.

Q. I show you Government's Exhibit No. 9 for identification. You referred a while back to a lock seal envelope. Is this the lock seal envelope?

A. This is the lock seal envelope in which I placed this exhibit. It is made out in my handwriting.

40 Q. That is, you placed Government's Exhibit No. 11 on Government's Exhibit No. 9, is that right?

A. That is correct.

Q. And you locked—

A. I lock-sealed it and signed it in the presence of Agent David Spillane, and it remained in my custody until such time as I delivered it to the United States chemist. Incidentally, we paid $500 for that.

Mr. Pincham: Objection, if the Court please, I move that be stricken.

The Court: It may go out, and the jury will disregard the voluntary statement of the witness.

Mr. Grady: You may cross-examine.

Cross Examination by Mr. Pincham.

Q. Mr. Gjertsen, for how long had you been assigned to the Chicago office, as of May 10, 1956?

A. Since March 1956.

Q. How long have you known Thomas Cross?

A. Since May 1956.

Q. Do you know where Thomas Cross is now?

A. Yes.

Q. Where is he now?

41 A. In the U. S. Attorney's office.

Q. And as of May of 1956, do you know whether or not Thomas Cross was a user of narcotic drugs?

A. Yes, he was.

Q. Do you know as of May 1956 how long he had been what you term a special employee of the Treasury Department?

A. Yes.

Q. How long had he been a special employee of the Treasury Department?

A. He was employed at that time.

Q. As of May—strike that. You mean at that time was the first time he had been hired by the Treasury Department as a special employee?

A. That is correct.

Q. Who employed him?

A. Agent George Emrich.

Q. What was his salary?

A. Five dollars a day, per diem.

Mr. Grady: I don't think there is any need—

The Court: I will let the witness tell if he knows. Do you know?

The Witness: Yes, sir.

The Court: That is not the best evidence, Mr. Pincham, but if he knows, I will let him tell. How much did the Government pay him?

The Witness: Five dollars a day per diem, plus a $200 reward.

By Mr. Pincham:

Q. And the $200 reward was in the event the Government obtained a conviction in any case in which he was working, is that correct?

A. No, that is not correct.

Q. I will ask you, has he received the $200 reward to your knowledge, as of now?

The Court: If you know.

By the Witness:

A. I made out the papers.

By Mr. Pincham:

Q. If you know, do you know whether or not Thomas Cross as of this moment has received the $200 reward?

A. I don't know, no.

Q. Who pays the reward?

A. The United States Government.

Q. Now, as of May—strike that. Now, you say that you had occasion to search Thomas Cross?

A. Yes.

Q. Where was he when you searched him?

43 A. In Government vehicle No. N-2119.

Mr. Grady: I think you might fix the date, counsel.

By Mr. Pincham:

Q. And where was he—thank you, Mr. Attorney. What date was it you first searched him?

A. On May 10.

Q. 1956?

A. 1956.

Q. And I believe you have informed the Court and jury that he was in a vehicle.

A. That is correct.

Q. Where was the vehicle at the time you searched him?

A. Outside of the Bureau of Narcotics, New Post Office Building.

Q. Was it day or was it night?

A. Afternoon.

Q. It was light out, was it not?

A. Yes.

Q. Was there anybody else present in the car when you conducted this search?

A. No, there was not.

Q. What sort of apparel did he have on when you conducted this search?

A. He had a jacket, a shirt, a dark pair of pants,

44 a pair of shoes and socks.

Q. Did you take his jacket off when you searched him?

A. No, I didn't.

Q. Did you take his shirt off when you searched him?

A. No.

Q. Did you take his pants off when you searched him?
A. No, I didn't.
Q. Did you take his shoes off when you searched him?
A. No, I didn't.
Q. Did he have on a hat?
A. Yes, he did.
Q. Did you take his hat off?
A. Yes.
Q. Did you look at his hat, all through the sweat band?
A. Yes.
Q. You didn't look inside his shoes, though, did you?
A. No. I made sure that he did not remove them in my presence.
Q. Just answer the question, yes or no.
A. No.
Q. Now, Agent Gjertsen, since you have been a Federal agent, have you not had experience with persons who are addicted to narcotic drugs who concealed narcotic drugs in their shoes?
A. Yes.
45 Q. Have you not also known of persons who concealed narcotic drugs in the flap of their trousers?
A. Yes, sir.
Q. Have you not also known of persons who concealed narcotics in the shoulders of their coats?
A. In the padding, yes.
Q. And knowing that, you conducted a search in this automobile?
A. Yes, sir.
Q. Without taking off the garments you said you didn't take off.
A. Yes.
Q. Now, do you know what kind of drug Thomas Cross used?
A. No, I don't.

Q. When you first met him?

A. No, I don't.

Q. Do you know now?

A. No, I don't.

Q. I take it that after you made this search, you then went some place with Cross?

A. Yes, to Hoyne and Madison Street.

Q. And the date that you conducted this search you have described to the Court and jury, is this the same date you first met Thomas Cross?

46 A. Yes.

Q. Where was he when you first saw him on that date?

A. In the office of Agent George Emrich.

Q. Where is his office located?

A. 817 New Post Building, Chicago, Illinois.

Q. How long was it before the search that you conducted in the automobile was it you first met him in this office?

A. I met him just after noon. We conversed with Agent Emrich, and Cross and myself—then Cross and I left the office and went down to the car. I conducted my search, and we proceeded to Hoyne and Madison Street.

Q. So I take it when you first saw Cross in this office, shortly thereafter, within perhaps minutes, you were downstairs in your automobile?

A. That is correct.

Q. Did you search Cross in this office?

A. No.

Q. Did any other agent search Cross in this office?

A. No, not to my knowledge.

Q. You don't know of your own knowledge what if anything Cross had when you first met him?

A. Nothing to my knowledge.

Q. Nothing, and you say nothing based on the search that you conducted in front of the New Post Office Building?

A. That is correct, by touch.

47 Q. By touch, you say?

A. Yes, by educated fingers.

Q. In other words, you searched him by pressing with your educated fingers?

A. Yes.

Q. And you touched over his garments?

A. Yes, sir.

Q. Now, will you state for the record the approximate size of Government's Exhibit 4 for identification?

A. Three by four inches.

Q. How thick is it?

A. A quarter of an inch thick.

Q. As a matter of fact it is possible for such size object to be concealed in a person's shoes, isn't it?

A. No.

Q. Can't he keep that in his shoes?

A. No.

Q. And because he could not keep it in his shoes is the reason you didn't look in his shoes, isn't it?

A. No, I watched his shoes the whole time he was in my presence.

Q. Do you know what he had in his shoes when you first saw him?

A. Feet and socks.

Q. Did you take his shoes off?

48 A. No.

Q. Then you don't know what he had in his shoes besides feet and socks?

A. There was not much room for much else.

Q. Let me ask you this, do your educated fingers

tell you when you feel a man's shoes, whether or not there is anything in his shoes besides feet and socks?

A. You try to conceal that on your person, and let me shake you down.

Q. Now, answer my question. Can you tell by your educated fingers by feeling the shoes of a person whether or not there is any other object in his shoes besides his feet and socks.

A. By touching, and by observance of his walk.

Q. Then you determined by the way he walked, coupled with your educated fingers, and feeling the leather on his shoes, whether or not there is anything in his shoes besides his feet and socks?

A. Yes.

Q. All right. You then proceeded to Hoyne and Madison?

A. Yes, sir.

Q. Approximately what time was it when you arrived at Hoyne and Madison?

A. About 4:15 p. m.

49 Q. Now, I believe you told the jury it was around noon when you first saw Cross, is that correct?

A. That is correct.

Q. And I believe you told the jury and his Honor, Judge Hoffman, that shortly thereafter, within minutes thereafter, you and Cross were downstairs in front of the New Post Office Building, is that correct?

A. That is not correct, no, sir.

Q. Well, how long after you first saw Cross was it that you came downstairs to the car in front of the Post Office Building?

A. About three hours.

Q. Was Cross in the office building during this three hours?

A. Yes, sir.

Q. Was he under your observation during the entire three-hour period that he was there?

A. Yes, he was.

Q. Did I ask you, sir, whether or not you searched him while he was up in the office?

A. You asked me.

Q. What was your answer?

A. I did not search him and no one else searched him.

Q. Approximately what time was it when you left
50 in front of this office building?

A. About 3:30.

Q. Approximately how far is it from the front of the office building to Hoyne and Madison?

A. About a 20-minute drive.

Q. It was approximately four o'clock when you arrived at Hoyne and Madison?

A. Approximately, yes.

Q. Who drove the automobile?

A. I drove.

Q. Did you park the automobile?

A. Yes, I did.

Q. Where did you park the automobile.

A. Hoyne and Madison.

Q. Madison is an east and westbound street in the City of Chicago, is that not correct, sir?

A. That is correct.

Q. Hoyne, sir, is a north and southbound street, is that correct?

A. That is correct.

Q. How far west is Hoyne Avenue?

A. About 2000.

Q. Did you park your car on Hoyne or on Madison?

A. Oh, Hoyne.

Q. Was there anyone besides you and Cross in
51 the car from the time you left your office until you arrived at Hoyne and Madison?

A. No, just me and Cross. Hoyne is 2100 West.

Q. 2100 west, thank you. Now, did you park your car on Hoyne?

A. On Hoyne off of Madison.

Q. Did you park your car on the east or on the west side of Hoyne?

A. On the east side—on the west side—on the east side, the lake side.

Q. On the east side of Hoyne?

A. Yes.

Q. Is that correct?

A. Yes.

Q. And you were facing in which direction, north or south?

A. North.

Q. Were you to the north or south of Madison Street?

A. North of Madison Street.

Q. And you and Cross got out of the car?

A. Yes.

Q. And I believe you stated that you walked up and down Madison Street?

A. Yes.

Q. Now, up to this time, had you ever had a con-
52 versation with Edward Minor?

A. No, sir.

Q. And up to this time had you had a conversation with Jessie Maroy?

A. No.

Q. How far did you walk up and down Madison Street before you saw the defendant Maroy or the defendant Minor?

A. About 20 minutes.

Q. And I take it you were observing how the special employee was walking during that time, were you not, sir?

A. Yes, sir.

Q. Now, where was the defendants Minor and Maroy when you first saw them?

A. On the south side of Madison Street near Hoyne.

Q. Were they east or were they west of Hoyne?

A. They were east of Hoyne.

Q. Were they walking or were they in an automobile?

A. They were in an automobile.

Q. In which direction was the automobile facing when you first saw it?

A. East.

Q. On Madison Street?

A. East on Madison.

Q. West of Hoyne?

A. West—east. It was on Madison east of Hoyne.

53 Q. Facing—

A. Facing east.

Q. Who was driving then?

A. Jessie Maroy.

Q. Minor was a passenger?

A. Yes, sir.

Q. Now at that time, on what side of Madison Street were you?

A. On the north side.

Q. And Minor and Maroy were on the opposite side of the street from you?

A. The south side.

Q. Were they to the east or west of you?

A. To the west of me.

Q. So that when you first saw them, I take it you were facing west?

A. I was facing south.

Q. You were facing south?

A. Yes.

Q. And were they then—then were the defendants then to your right or to your left?

A. Off to my right.

Q. That would put them to the west of you?

A. Yes.

54 Q. Is that correct?

A. Yes.

Q. Now, was Cross with you at that time?

A. Yes, sir.

Q. Had he been with you continuously and uninterruptedly from the time you left the office up to the time you saw the defendants?

A. Yes, sir.

Q. Approximately how far in feet were the defendants from you when you first saw them?

A. Completely on the other side of Madison Street, which would be—let me see, an automobile width is, I would say, six feet. That would be four automobiles abreast, about 25 feet.

Q. Did you observe the defendant Maroy get out of the automobile?

A. Yes, both.

Q. Had you said anything to Maroy up to the time you saw him get out of the automobile?

A. Not a word.

Q. Had Cross said anything to Maroy up to the time you saw him get out of the automobile?

A. Not a word.

Q. Had either you or Cross said anything to

55 Minor up to the time you saw Maroy get out of the automobile?

A. Not a word.

Q. Did you observe Minor get out of the car?

A. Yes.

Q. Who got out of the car first, Minor or Maroy?

A. Maroy.

Q. When Maroy got out of the car, in which direction did he go?

A. To the sidewalk.

Q. That is on the south side of Madison Street?

A. The south side of Madison Street.

Q. When he got to the sidewalk, did he go either east or west?

A. He joined with Edward Minor.

Q. Now, when he did that, did he go east or west?

A. They stopped.

Q. Now at the time they stopped, had either you or Cross said anything to either Maroy or Minor?

A. No, we were still 25 feet apart.

Q. Now, after Maroy joined Minor on the south side of Madison Street, did you observe Maroy walk in any direction before you—either you or Cross said anything to either one of the defendants?

A. Yes, they had walked over to our direction. They came over to us.

56 Q. They were walking then in a northerly direction?

A. Northeasterly direction.

Q. Now, when they started walking in this northeasterly direction, had you then said anything to either of the defendants?

A. Not a word.

Q. Had Cross said anything to either of the defendants?

A. No.

Q. Who was the first person that said something, you or Cross, to either one of these defendants?

A. Maroy spoke first.

Q. What did Maroy say?

A. He addressed Cross.

Q. What did he say?

A. He said, "Where have you been, Man?" I have not seen you around the streets."

Q. All right. When he said that, where was he, on the north side or south side of Madison Street?

A. Now on the north side, stepping up on the curb.

Q. And when he said that, how far approximately, in feet, was he from Cross?

A. Hand shake distance.

Q. Did they shake hands?

A. No.

57 Q. Now, when Maroy said to Cross, "Where have you been, Man? I have not seen you on the streets," or words to that effect, what did Cross say?

A. He said, "Since my old lady died, I have not been coming to the West Side. I've got me a flat on the south side, and it is kind of hard to get back over here on the West Side."

Q. What was the next thing that was said by either Maroy or Cross?

A. Cross said, "I have got my man with me. I want to do some business."

Q. And when he said that, you were all standing there, were you not?

A. Yes.

Q. Was Minor standing there?

A. Yes.

Q. And I take it you were standing all four in a group there?

A. Yes.

Q. And when Cross said, "I have got my man with me," did he say, "I want to do some business," or the man wants to do some business?

A. The man wants to do some business.

Q. That was Cross said that?

A. Yes.

Q. And when he said that, what did Maroy say?

58 A. He said, "I don't do business with no grays,

and furthermore, if you have got business to do, do it with my man."

Q. Did he say that before Maroy and Cross went over and had this conversation out of your presence, or after they had this conversation out of your presence?

A. Before they went out of my presence. I couldn't hear anything else.

Q. So the next thing that Maroy said, "I don't do business with a gray. Furthermore, if you want to do business, you will have to do it with my man."

A. Yes, sir.

Q. And that was in your presence?

A. Yes.

Q. And that was before Maroy and Cross left your hearing and had a conversation?

A. Yes.

Q. Now, when Maroy made that statement to Cross, what did Cross say?

A. I don't know. I couldn't hear any more.

Q. Well, now, they were still standing there, weren't they?

A. Yes.

Q. Did you hear Maroy say anything else after he said that?

59 A. No. I watched his mouth work, but I couldn't tell what he said.

Q. Now, tell this Court and jury everything you heard said from the time you first heard Maroy say something up to the time Cross and Maroy left your hearing.

A. Left my hearing?

Q. Yes.

A. I couldn't hear anything.

Q. Well, I will ask you this. Have you now told this Court and jury everything you heard Maroy say before Maroy and Cross left from your hearing?

A. Yes, sir.

Q. So that the last thing that Maroy said before he left your hearing was, "I don't do business with a gray. Furthermore, if you want to do business, do it with my man."

A. Yes.

Q. And when he said that, he walked off?

A. That is correct.

Q. And did Cross walk off with him?

A. Yes, he and Minor, too.

Q. Which direction did Maroy walk?

A. East.

Q. And in which direction did Cross walk?

A. East.

60 Q. Now, which direction did Minor walk?

A. East.

Q. Did they all three walk east together?

A. Yes, sir.

Q. After they walked east, that left you standing there, did it not, sir?

A. That is correct.

Q. Did they stop at any distance after they walked east?

A. Yes, just out of my hearing.

Q. Approximately how far in feet was it that they stopped?

A. Three paces, three yards.

Q. Three yards, and when they stopped, you saw their mouths working, you say?

A. Yes.

Q. You saw Cross' mouth working?

A. Yes, sir.

Q. Did you see Maroy's mouth working?

A. Yes.

Q. Did you see Minor's mouth working?

A. No.

Q. Approximately how long were they standing about three yards from you before you again said something to Cross?

A. When they came back to me again.

61 Q. Now, all of them didn't come back to you, did they?

A. No.

Q. Only Minor and Cross came back?

A. Minor and Cross and Jessie came back.

Q. Minor, Cross and Jessie?

A. Yes.

Q. Did Maroy come back?

A. Yes.

Q. How long were were they—

The Court: Who is Jessie?

The Witness: Jessie Maroy.

By Mr. Pincham:

Q. How long were they engaged in conversation about three yards from you before they came back to where you were standing?

A. A couple of minutes.

Q. I take it they walked away from you because they did not want you to hear what they had to say?

Mr. Grady: I will object to that.

The Court: I sustain the objection.

By Mr. Pincham:

Q. When they came back to where you were, what was the first thing that was said when they got back?

A. Cross said to Maroy, "This is my man."

Q. He had already told him that you were his

62 man, didn't he?

A. I hadn't shook hands with him yet. He didn't know me yet. He introduced me as Johnny, and I shook hands with Maroy.

Q. When he came back, Cross again said, "This is my man"?

A. That is right. He hadn't introduced me up to that time.

Q. When he said that, what happened then?

A. Jessie said—he just said, "Howdy," that is all.

Q. Did he shake hands?

A. Yes, sir, we shook hands.

Q. And when he said that, what did you say, if anything?

A. "Hey, Man, I want to do some business."

Q. Hadn't he just told you that he would not do business with a gray?

A. No, he was talking to Thomas Cross.

Q. In your presence?

A. Yes.

Q. You said to him, "I want to do some business"?

A. Yes.

Q. What did Maroy say then?

A. "I don't do business out on the street. If you want to do business, talk to my man."

He indicated that was Edward Minor.

63 Q. By that you mean he pointed with his hand to Edward Minor?

A. Yes. Then he left. Maroy left.

Q. Maroy left?

A. He didn't stay any more.

Q. In which direction did he then go?

A. He went east.

Q. On Madison?

A. On Madison to the all-night food store.

Q. On the south or north side of the street?

A. North side of the street.

Q. Did you again see Maroy that day?

A. No.

Q. Now, you and Minor and Cross were present when Maroy left and went to this all-night food store?

A. Yes, he went in that direction. It seems as though he went in.

Q. And this food store is located approximately one block east of Hoyne?

A. It is in the middle of the block off of Hoyne, on Madison Street.

Q. After Maroy had left, did you then have a conversation with Minor?

A. Yes.

Q. Was Cross present when you had this con-
64 versation with Minor?

A. Yes.

Q. Where did this conversation take place?

A. Enroute, walking east on Madison Street towards Hoyne.

Q. And during the entire conversation, Cross was present?

A. Cross did the speaking.

Q. Cross did the talking?

A. Yes.

Q. Did you give Minor any money at this time?

A. No.

Q. Did Cross give Minor any money at this time?

A. No.

Q. After this conversation with Minor that you overheard between Minor and Cross, where did you go?

A. I accompanied Thomas Cross to the B & B Restaurant located at Levitt and Madison Street.

Q. And the B & B Tavern is on the northwest corner of Madison and Levitt, isn't that correct?

A. Correct.

Q. And Levitt is 2200 west, isn't that correct?

A. That is correct.

Q. Running north and south?

A. That is correct.

65 Q. Now, when you entered the B & B Tavern, where was the next place that you saw the defendant Minor?

A. Walking east on Madison Street.

Q. Was he at that time between Hoyne and Levitt?

A. He was between Hoyne and the next street east. He was between Hoyne and the all-night food store.

Q. He was on the street?

A. On the street walking toward Maroy.

Q. Now, you mean he was walking towards the direction in which Maroy had gone?

A. Yes.

Q. You don't mean to tell this jury that you saw Maroy then, do you?

A. No, he was out of sight.

Q. Now, approximately how long was it from the time you saw Minor walking east from Hoyne was it before you again saw him?

A. About 20 minutes.

Q. Where was he when you next saw Minor? Where was Minor when you next saw him?

A. He entered the rear door of the B & B Tavern at Levitt and Madison Street. I was seated within.

Q. You were seated at a table?

A. Yes.

Q. Where was Cross?

66 A. Seated next to me.

Q. At the same table?

A. At the same table.

Q. Was there anything before you to drink?

A. We were drinking beer.

Q. Was Cross drinking beer?

A. Yes.

Q. When Minor entered the tavern, did he come over to the table where you were?

A. He had to pass right next to us.

Q. Did he come over to the table where you were?

A. He nodded his head.

Q. Did he come to the table where you were?

A. He went to the bar.

Q. He did not come to the table where you were, did he, sir?

A. No, he did not. It is a two seat table.

Q. And when he walked over—he could have been standing there.

A. Yes, he could have done that.

Q. But he didn't, he walked over to the bar?

A. Yes.

Q. Approximately how far did he stand at the bar from your table?

A. About five feet.

67 Q. And he nodded to you?

A. Yes, as he entered the door, I turned around to see if it was him, and he nodded to me.

Q. And up to the time that he entered the door, up to the time he stood at the bar, he said nothing to you?

A. No, no conversation.

Q. From the time he entered the door up to the time he stood at the bar, he said nothing to Cross?

A. That is correct.

Q. And Cross said nothing to Minor up to the time he stood at the bar?

A. That is correct.

Q. The door that you say he entered is the door facing east on Levitt, is that not correct, sir? The door that Minor entered when he entered the tavern.

A. Facing east, yes.

Q. And when Minor entered the tavern, he was then facing west?

A. No, he—he was approaching east.

Q. The tavern is on what corner?

A. Northeast, on the northeast corner.

Q. Is it on the northeast corner or is it on the northwest corner?

A. On the northeast corner.

Q. When Minor walked in, he faced east?

68 A. East, that is correct.

Q. And as he entered the tavern, I take it you were to Minor's right?

A. Yes.

Q. And when he stood at the bar, he was facing east?

A. He didn't face the bar. He faced west, his back to the bar.

Q. With his back to the bar, his back was facing east?

A. East.

Q. Did you get up out of your chair and walk over to the bar where Minor was standing?

A. No.

Q. Did Cross get up from his chair and walk over to the bar where Minor was standing?

A. Yes. He was on the outside.

Q. When you say on the outside, by that what do you mean, sir?

A. Here is the wall. I was seated here and Cross was seated here at a table similar to this with a beer in front of each of us. I was on the wall side and Cross was on this side. When Minor came in, I turned and looked at him, and he nodded to me, and Cross got up and joined him.

Q. And stood at the bar with him?

A. Yes.

69 Q. Was Cross standing to the right or left of Minor?

A. Right.

Q. That would cause Cross to be standing on the north of Minor?

A. Right, with his back to the south.

Q. With his back to the south?

A. Yes.

Q. That is Cross?

A. Cross with his back to the south, facing north, and Minor with his face to the south, his back to the north.

Q. And up to the time that Cross was standing at the bar, had you given Cross any money?

A. Yes, when Minor came in—

Q. Just answer the question. The answer is yes, is that correct?

A. Yes.

Q. You gave Cross some money before Cross got up from the table to walk over to the bar?

A. That is correct.

Q. Isn't that correct?

A. Yes, I counted out $60 Government money.

Q. Now, up to that time, you did not know of your own knowledge what, if anything, Minor had, did you?

A. No.

Q. When you gave Cross some money, Cross then
70 got up and walked over to where Minor was?

A. Yes.

Q. And I believe you told the Court and jury that you observed Cross give Minor some money?

A. Yes.

Q. Now, at the time that Cross gave Minor some money, at the time the money was passed, was Minor still standing at the bar?

A. Yes.

Q. Was he still standing with his back to the bar?

A. Yes.

Q. Was he still standing with his back facing east?

A. Back facing north.

Q. Back facing north?

A. Yes.

Q. And I take it Cross and Minor were facing each other?

A. That is correct.

Q. Cross was between you and Minor?

A. No, they were both next to me. They were here and I am here.

Q. In other words, you are more or less parallel to where they were standing?

A. Yes, their profiles were to me.

Q. Now, with which hand did Cross pass the money to Minor?

71 A. The right hand.

Q. And at that time, with which hand did Minor accept the money?

A. Both hands.

Q. Now, at that time had you seen Minor give Cross anything?

A. No.

Q. Did you at any time see Minor give Cross anything?

A. Yes.

Q. You saw Minor give Cross something after you had seen Cross give Minor some money?

A. Yes.

Q. How long after?

A. He counted the money, and put it in his left pants pocket and reached with his right hand into this right coat pocket—this is Minor—and extracted a package from the right coat pocket and handed it to Cross.

Q. And he was still standing profile to you?

A. The pocket that he withdrew the evidence from was facing me.

Q. I am asking you at the time—I beg your pardon.

A. His pocket was facing me that he extracted the package from.

Q. And you saw Cross take the package?

A. Yes.

72 Q. With what hand did he take it?

A. The right hand.

Q. What did he do with it when he took it?

A. He held it in his hand.

Q. Did Minor leave?

A. Yes.

Q. When Minor left, had you then said anything to Cross?

A. No.

Q. Was Cross still standing at the bar?

A. Yes.

Q. Were you still sitting at the table?

A. Yes.

Q. Had you gotten up from the table up to the time you saw Minor leave?

A. No, I had not.

Q. Did Minor leave at the same door he entered?

A. Yes, he did.

Q. When you last saw Minor, he was going out the door, is that correct?

A. That is correct.

Q. And where was Cross at the time you saw Minor go out the door?

A. Standing at the bar.

Q. And he later came over and talked to you, that is Cross did?

73 A. He came straight to me, yes.

Q. And when he came to you, you had a conversation with him?

A. Yes.

Q. And he gave you something?

A. Yes.

Q. Now from the time you entered the B & B Tavern up until the time you received the package from Cross, had you left B & B Tavern at any time?

A. No.

Q. Had Cross left the B & B Tavern at any time?

A. No.

Q. And the only time you saw Minor in the tavern was immediately prior to Cross giving him some money.

A. That is correct.

Q. How long did you remain in the tavern after Minor had left?

A. I followed with Cross on his heels.

Q. How long in minutes was it after Minor left that you left the tavern?

A. I was on his heels.

Q. On Minor's heels?

A. Yes.

Q. When you say on his heels, you mean, in other words you immediately got up and went out behind him?

74 A. Yes, Cross and I met and followed him out.

Q. Now, when you followed Minor out of the Tavern, when you first saw him on the street, in which direction was Minor walking?

A. Across the street.

Q. That would cause him to be walking east or west?

A. He was walking west across Levitt Street to his automobile.

Q. Was Cross with you at that time?

A. Yes.

Q. And did you go some place after you left the tavern?

A. Yes, Cross and I both walked—

Q. Which direction did you go?

A. We went east on Madison.

Q. Did you go to Hoyne and Madison?

A. South on Levitt Street to Madison, east on Madison to Hoyne, north on Hoyne to my car.

Q. And you got into your car?

A. Yes.

Q. Where was Minor when you last saw him?

A. Driving away, east on Madison Street.

Q. Now, I believe you told the Court and jury that you conducted a field test, as you term it, on Government's Exhibit—or the contents, rather, of Government's Exhibit No. 4 for identification?

75 A. Yes, sir.

Q. Is that correct?

A. Yes.

Q. And that test was conducted on or about the 10th of May, 1956, in your office, is that correct, sir?

A. Yes.

Q. Approximately what time was it you conducted that test?

A. About 7:30 at night.

Q. When you conducted this test, tell the Court and jury hat you did.

A. I opened the package which was wrapped in a yellow page of the telephone directory. I opened the package, and it contained a white powder. This white powder—I reached inside of my drawer and opened a package of markee reagent which are small Government-manufactured test tubes which contain a chemical ingredient which, when it comes—

Q. Let me ask you this, what is this—

The Court: Suppose you let—you don't want an answer to your question?

Mr. Pincham: Oh, yes.

The Court: Do you withdraw the question?

Mr. Pincham: Oh, no, let it stand. Pardon the interruption.

76 By The Witness:

A. This glass test tube contains a chemical reagent which, upon contact with any derivative of opium, it will turn purple. I took a sample of the powder from this package, broke the glass tube and put some of the powder in the test tube. I shook it, and it turned dark purple, which is a positive test for a derivative of opium.

Q. Now, this substance which is in this test tube, is a liquid, is it not?

A. Yes, sir, that is correct.

Q. What is it called?

A. Markee.

Q. I will ask you this, is a derivative of opium the only substance that would turn the markee purple?

A. Yes, sir.

Q. Is it?

A. Yes, sir.

Q. Have you studied quantitative analysis?

A. No.

Q. Have you studied qualitative analysis?

A. No. I have been exposed to it in Tulane University. I didn't make a study of it.

Q. As a matter of fact, won't penicillin turn the markee purple?

A. No.

77 Q. Are you sure of that?

A. Yes.

Q. Have you ever put penicillin in a markee?

A. No.

Q. Then how can you tell this jury it won't turn purple?

A. I didn't say it would turn purple.

Q. Will penicillin turn markee purple?

A. No, it won't.

Q. How do you know?

A. Of my own knowledge.

Q. Have you ever put penicillin in markee?

A. I have never seen penicillin turn a markee purple.

Q. When you say it will not, you are stating that, are you not, sir, because you had never done it?

A. Of my own knowledge, I cannot testify to anything not of my own knowledge.

Q. That is what I want to find out, of your own knowledge.

A. I am no chemist. I am a narcotics agent.

Q. Where was Cross when you last saw him on this evening of May 10th?

A. I dropped him off at the subway in the Loop.

Q. That was before you went to your office?

A. That is correct.

Q. Now, after you conducted this markee test on or about 7:30 on the evening of May 10th, you then put
78 Government's Exhibit 4 in an envelope which has been identified as Government's Exhibit No. 1, is that correct?

A. No, that is not correct.

Q. Well, I will ask you, what did you do with Government's Exhibit 4 after you conducted this test?

A. I rewrapped the package, and placed it on a scale and got the approximate weight of the package, then I sealed it in a lock seal envelope and submitted it to the chemist.

Q. When did you submit it to the chemist?

A. On the following day.

Q. Where was the package from the time you sealed it up to the time you delivered it to the chemist?

A. Locked in the safe of the Narcotics Office, 817 New Post Office Building.

Q. Who locked it in the safe?

A. I placed in it there. I placed it in the safe.

Q. After you placed it in the safe, you then closed the safe?

A. Yes.

Q. I believe you told the Court and jury you next saw the defendant Minor on May 22, 1956. Is that correct?

A. I said I had seen him on that day, but I had seen him on a previous day.

Q. Did you see Minor on May 22, 1956?

79 A. Yes, also May 11th.

The Court: Is your cross examination going to continue for some time? I don't mean to restrict you. I thought this would be a point where we might take a recess.

Mr. Pincham: I will appreciate it.

The Court: Please don't talk to anybody during the intermission. We will take a brief recess.

(Recess.)

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: I would say to you lawyers with respect to my ruling about the admissibility of these conversations as against the defendant Maroy, if, when and as you reach a conclusion that the Government has put in what is described as a prima facie case, you may renew your motion to have the Court direct the jury to consider that evidence. I leave it to you to determine when you think you have put in such a prima facie case.

Mr. Grady: Thank you.

The Court: I believe that is the law of evidence so far as it pertains to conspiracy. I believe that is what
80 we have always done here.

Will you bring in the jury.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Mr. Pincham, will you continue with your cross examination of this witness.

Mr. Pincham: Yes, your Honor.

By Mr. Pincham:

Q. Mr. Gjertsen, going back to the B & B Tavern, the first time that you saw Government's Exhibit 3 for identification was in the B & B Tavern?

A. That is correct.

Q. And it was at that time in the possession of whom?

A. Thomas Cross.

Q. And the first time that you saw Government's Exhibit 4 for identification was in the B & B Tavern? This is 4.

A. At the time I saw 4, it was not contained in this envelope. It was contained in the telephone directory newspaper—the telephone directory paper wrapper.

Q. Nothing else was—no other kind of paper was around it?

A. No, sir.

Q. Other than the rubber band around this paper?

A. And the scotch tape.

Q. You don't know of your own knowledge with
81 whom, if anyone, Minor talked, from the time he left you and Cross on Madison Street up to the time he came into the B&B Tavern, do you, sir?

A. No, I do not.

Q. Now, on the 10th day of May, 1956, when you were in the vicinity of Madison and Hoyne, did you see any other employees of the Narcotics Division of the Treasury Department in that vicinity?

A. Yes.
Q. Who else did you see?
A. Agent David Spillane.
Q. Anyone else?
A. Agent Joseph Tremoglie.
Q. Anyone else?
A. No.
Q. How do you spell Agent Spillane?
A. S-p-i-l-l-a-n-e.
Q. And the name of the other agent was what?
A. Joseph Tremoglie, T-r-e-m-o-g-l-i-e.
Q. Did you see any other other agent besides Spillane and Tremoglie?
A. No.
Q. Where was Spillane when you first saw him in that vicinity?
A. Concealed in a jeep truck.
82 Q. Where was the jeep truck?
A. Levitt and Madison Streets opposite the B&B Tavern.
Q. In other words, the jeep truck was on the west side of Levitt?
A. Yes.
Q. Facing south?
A. Yes.
Q. North of Madison street?
A. Yes.
Q. How far north of Madison in feet approximately?
A. Three car lengths.
Q. Was that the first time that you had seen that jeep in this vicinity?
A. No.
Q. On this date, on this afternoon?
A. No.

Q. Where had you seen the jeep before that on the afternoon of May 10th, in that vicinity?

A. Patrolling the streets.

Q. When you say patrolling the streets, what streets did you see it patrolling?

A. Madison, Hoyne, Levitt and Washington.

Q. Did you see that jeep during the time that you and Cross were walking up and down Madison Street?

A. Yes.

83 Q. Did you see this jeep at the time you and Cross were supposed to have had the conversation with Maroy and Minor?

A. No.

Q. Did you see this jeep after you had this conversation with Minor and Maroy and Cross, and before you entered the B&B Tavern?

A. Yes.

Q. Where were you when you first saw it at that time?

A. Entering the tavern.

Q. In the B&B Tavern?

A. Yes.

Q. At that time it was then parked north of Madison about three car lengths, on the west side of the street?

A. It was parking.

Q. Parking?

A. Yes.

Q. At that time you saw Agent Spillane?

A. Yes.

Q. Was there anyobdy else in the jeep?

A. Agent Tremoglie was concealed in the rear.

Q. Did you see him there?

A. I saw him looking through the peep hole.

Q. Now when you came out of the tavern, was the jeep still there?

84 A. Yes.

Q. Did you see Agent Spillane?

A. Yes.

Q. Was he in the jeep?

A. Yes.

Q. Did you see Agent Tremoglie?

A. Yes.

Q. And at that time, was he in the jeep?

A. Yes, he was.

Q. When you came out of the tavern, you came out with Cross?

A. Yes.

Q. Did you get into an automobile?

A. Yes.

Q. Where was your automobile?

A. At Hoyne and Madison.

Q. Did Cross get into the automobile with you?

A. Yes, he did.

Q. Now, from the time you left Madison Street and Levitt up to the time you arrived at Hoyne and Madison, did you see the jeep?

A. Yes.

Q. Where did you see it during that time?

A. Proceeding on Madison Street following me and Cross.

Q. In an easterly direction, is that correct?

85 A. Yes.

Q. When you got into your car at Hoyne and Madison, did you see the jeep?

A. Yes, it turned in at Hoyne and Madison, and I got in my car and they followed me to the building.

Q. What building?

A. The new post office building, Bureau of Narcotics. Edward Minor parked right behind the jeep.

Q. That is on the west side?

A. On the west side, yes.

Q. Of Levitt, is that right?

A. Yes.

Q. When you came out of the tavern, you saw a car parked behind the jeep?

A. Yes.

Q. Did you see who parked the car behind the jeep?

A. No.

Q. So that when you told the jury that Minor parked behind the jeep, you are telling them what somebody else told you?

A. I saw him get into that car.

Q. You saw him get into the car, but you didn't see him get out of it, did you?

A. No, I saw him enter it.

Q. You did not see him parked either, did you?

86 A. No.

Q. All right. When you saw him get into it that was when you and Cross were coming out of the tavern?

A. Yes.

Q. Did you see him drive off?

A. Yes.

Q. Which direction did he drive?

A. To Madison.

Q. Which direction on Madison did he go?

A. East.

Q. Where was he when you last saw him?

A. Proceeding east on Madison Street.

Q. Was he at that time either east or west of Hoyne when you last saw him?

A. He was west of Hoyne.

Q. Did the car stop?

A. No, it continued on up Madison Street towards Hoyne.

Q. And I take it it disappeared from your view in the traffic?

A. Yes, I turned at Hoyne and got in my own car.

Q. Now, on the 22nd day of May, you told the Court and jury that you were in the vicinity of Warren and Washington on Sacramento.

A. Yes.

87 Q. Who if anyone, was with you at that time?

A. Agent David Spillane.

Q. Did you go there in this jeep that you have told the Court and jury about?

A. Yes.

Q. Was Agent Tremoglie with you?

A. No.

Q. Do you know where Agent Tremoglie was?

A. No, I don't.

Q. Had you talked with Agent Tremoglie prior to your going to the vicinity of Warren and Washington on Sacramento?

A. No.

Q. Who drove the car, by the way?

A. Agent Spillane.

Q. You left from the office building, the New Post Office Building?

A. From the Northwestern Garage.

Q. Approximately what time was that?

A. It was around 4:30 or 5:00 o'clock.

Q. Did Cross go with you?

A. No.

Q. Had you seen Cross that day, the 22nd?

A. Yes.

88 Q. Prior to your going out to Sacramento between Washington and Warren?

A. Yes.

Q. Where had you seen Cross?

A. In the company of Agent Turnbou.

Q. Where was that?

A. At the Bureau of Narcotics Office.

Q. Now, when you arrived in the vicinity of Warren and Washington, was the jeep parked?

A. Repeat, please.

The Court: Read the question.

(Last question read.)

By The Witness:

A. We were parking.

By Mr. Pincham:

Q. Where did you park?

A. We parked in an east and west alley off of Sacramento, east of Sacramento, between Washington and Warren.

Q. How far west is Sacramento?

A. Half a car length.

Q. I mean, how far west of State Street is Sacramento?

A. West of State?

Q. Yes, how many blocks?

A. It is about 2500.

Q. Washington and Warren are both east and
89 westbound streets, are they not, sir?

A. Yes, sir.

Q. Did you remain in the jeep?

A. Yes, I did.

Q. Did Agent Spillane remain in the jeep?

A. Yes.

Q. Now, did you see Cross while you were sitting in the jeep there at any time right east of Sacramento?

A. Yes.

Q. Where was Cross when you first saw him?

A. He was walking east through the alley in back of Agent William Turnbou.

Q. Was he east or west of where you were parked when you first saw him?

A. He was west of where I was parked.

Q. And I take it he was walking in the direction to where you were sitting?

A. Yes, from Albany Street in the direction of Sacramento Street.

Q. And was that the first time that you had seen Cross that day, in the vicinity of Washington, Warren, and Sacramento?

A. Yes.

Q. And up to that time, had either you or Agent Spillane left the jeep?

90 A. No.

Q. And I believe you stated that Turnbou was walking east with Cross?

A. Yes, through the Alley.

Q. Am I to understand correctly, sir, that this is the same alley you parked in?

A. Yes, I am on the east side of Sacramento in the alley, and he is on the west side of Sacramento in the alley.

Q. I see. When you saw Turnbou walking with Cross, was this the first occasion on which you had seen Turnbou in the vicinity?

A. In the vicinity of Sacramento?

Q. Yes.

A. Yes.

Q. Did Cross and Turnbou disappear from your view during the time that they were walking in this alley between Sacramento and Albany?

A. Yes.

Q. Where was the last place that you saw Cross and Turnbou prior to their disappearing from your view?

A. Midway up the alley, the east and west alley between Albany and Sacramento and also between Washington and Warren.

Q. And in which direction were they going im-
91 mediately prior to their disappearance from your view?

A. East.

Q. Did you later see Cross that afternoon?

A. No, I didn't.

Q. Did you later seen Turnbou that afternoon?

A. Yes, I did, that night.

Q. Where did you see Turnbou that night?

A. In the office of the Bureau of Narcotics.

Q. When you saw Turnbou in the office of the Bureau of Narcotics later that night, was that the first and only time you had seen him after you saw him disappear from your view in the alley between Albany and Sacramento?

A. Yes.

Q. Now, you saw the defendant Minor on this evening?

A. Yes.

Q. Now, when you first saw Minor, were you then parked in the alleyway between—that is, east of Sacramento between Washington and Warren Boulevard?

A. No, I wasn't.

Q. Where were you when you first saw Minor that afternoon?

A. I was proceeding east on Warren Boulevard toward Sacramento.

Q. And at that time, where was Minor?

A. Leaving the 1956 Pontiac Catalina.

92 Q. Where was the 1956 Pontiac parked?

A. Parked three lengths off of Sacramento on Warren facing east, on the north side.

Q. On the north side of—

A. Warren.

Q. Facing in which direction?

A. East.

Q. Now, did you see where Minor went after he got out of the car?

A. Yes.

Q. Where did he go?

A. He entered an apartment building situated in the middle of the block adjacent to the alley.

Q. In the middle of the block on Warren Boulevard.

A. On Sacramento between Washington and Warren.

Q. On which side?

A. The west side.

Q. I beg your pardon?

A. West side.

Q. And when you saw him enter that building, where were you then?

A. Then we parked in the east side alley off of Sacramento.

Q. Did you again see Minor?

A. Yes, I saw him leave the building.

93 Q. After he left the building, in which direction did he go?

A. South on Sacramento.

Q. Where was he when you last saw him walking south on Sacramento?

A. He turned into the alley.

Q. He turned into what alley?

A. The east west alley between Washington and Warren off of Sacramento.

Q. That is the alley running east and west between Sacramento and Albany?

A. That is correct.

Q. That is the alley that is across the street from where you were parked?

A. That is correct.

Q. When you saw him enter that alley, did Minor later disappear from your view?

A. Yes, he did.

Q. Where was Minor when he disappeared from your view?

A. The alley takes a twist. It takes a slight twist. As he entered the twist, he was approaching Agent Turnbou and Cross near that twist.

Q. Did you see him say anything to Agent Turnbou?

A. No.

Q. Did you see him say anything to Cross?

94 A. No.

Q. Did you later see—you again saw Minor, did you not?

A. Yes.

Q. Where was Minor when you again saw him?

A. Coming out of the alley.

Q. He was at that time going east, was he not?

A. Yes.

Q. In the east and west bound alley between Sacramento and Albany?

A. That is correct.

Q. And I take it that you and Agent Spillane were still in the jeep?

A. Yes.

Q. And at that time, had either you or Agent Spillane gotten out of the jeep?

A. No.

Q. Where did Minor go at that time?

A. He proceeded south on Sacramento to Warren, and entered the 1956 Pontiac.

Q. And up to the time—you saw him enter the 1956 Pontiac; had either you or Agent Spillane gotten out of your car?

A. No.

Q. I will ask you this, did you ever get out of the car after you arrived on the west side and before you

95 returned back to the office?

A. No, I didn't.

Q. Did Agent Spillane get out of the car at any time from the time you left the northwestern parking lot up to the time you returned to your office?

A. No, he did not, not to my knowledge.

Q. And after you saw the defendant Minor enter this 1956 Pontiac, did you later see Minor?

A. Yes.

Q. Where was he when you next saw him?

A. We started the jeep—

Q. Where was Minor when you next saw him?

A. Driving the 1956 Pontiac.

Q. On what street?

A. On Warren proceeding east.

Q. In which direction?

A. Proceeding east.

Q. I beg your pardon?

A. Proceeding east on Warren.

Q. Where were you at this time?

A. I was parked in the jeep at the intersection of Sacramento and Warren Boulevard.

Q. Facing south?

A. Facing now north.

96 Q. Now, did you see Minor park the car later?

A. Yes.

Q. Where did he later park?

A. Two car lengths off of Hoyne on Madison.

Q. East or west of Hoyne?

A. East of Hoyne.

Q. On the north or the south side of the street?

A. On the north side, facing east.

Q. Now, you have told this Court and jury that you then saw him walk over to where Maroy was?

A. Yes.

Q. Where was Maroy?

A. Standing outside of a bar located at Hoyne and Madison Streets, off of Madison on Hoyne, on the northeast corner of Hoyne and Madison.

Q. And did you hear Minor say anything to Maroy?

A. No, I did not.

Q. Did you hear Maroy say anything to Minor?

A. No, I did not.

Q. You have told this Court and jury that their hands met.

A. Yes.

Q. Which hands met?

A. The right hands.

Q. Of each defendant, is that right?

97 A. The right hand of Minor and the right hand of Maroy.

Q. Did you see anything in Minor's hand at that time?

A. No, I was at too great a distance.

Q. Did you see anything in Maroy's hand at that time?

A. No.

Q. And when their hands met, what did they do then?

A. Engaged in a conversation.

Q. Did you overhear it?

A. No.

Q. After they engaged in a conversation, did they remain standing there?

A. No. they got into the 1956 Pontiac.

Q. And did the car leave?

A. It left. Jessie Maroy was driving.

Q. Jessie Maroy was driving?

A. Yes.

Q. And Minor was in the front seat on the passenger side?

A. That is right.

Q. When you saw Minor and Maroy get into the car, where were you?

A. I was in the jeep on the west side of the intersection at Hoyne and Madison, double parked.

Q. Now, did you observe where Maroy and Minor went after they left the vicinity of Hoyne and Madison?

A. In the direction of 111 Wood Street.

98 Q. Did you go to 111 Wood Street?

A. We dropped the surveillance.

Q. Where were you when you dropped the surveillance?

A. On Madison.

Q. At Hoyne?

A. At Hoyne proceeding east towards the Bureau of Narcotics.

Q. Now, the first time that you saw Government's Exhibit 7 for identification where were you?

A. In the office of the bureau of Narcotics.

Q. Did anyone have it when you first saw it?

A. Agent William Turnbou had it.

Q. You didn't see where Agent Turnbou got it from, did you?

A. No, I did not.

Q. And the first time you saw the contents of Government's Exhibit 8 for identification, where were you?

A. In the office of the Bureau of Narcotics. This white powder was contained in Government's Exhibit No. 7.

Q. Did anyone have it when you saw it at that time?

A. Yes, Agent William Turnbou.

Q. Did you see where he obtained it from?

A. Only by conjecture.

Q. No, I am not asking you that. Did you see it?

99 A. No, I did not see it, at the time.

Q. You saw the defendant Maroy on July 5, 1956?

A. Yes, sir.

Q. About what time was it that you first saw the defendant Maroy?

A. On July 6.

Q. Well, did you see him on July 5th?

A. On July 5th, oh, yes. You are going to another transaction.

Q. I am going on what you say is another transaction.

A. Yes.

Q. Where was Maroy when you saw him for the first time on July 5th, 1956?

A. He was coming out of the building located at 111 North Wood Street.

Q. Was he alone or was he with someone?

A. He was with the defendant Minor.

Q. Where were you when you saw him?

A. I was parked across Wood Street near—it was a no parking zone. There was some construction going on in that area. I was parked in the no parking zone near some construction work.

Q. On Wood Street?

A. Off of Wood, in this construction area.

100 Q. 111 North Wood Street is on what side of the street?

A. East.

Q. Were you alone or were you with someone when you first saw Maroy on this evening?

A. In Government automobile N-2162, radio car, and there were two other radio cars in the vicinity.

Q. Was there anyone else in the car with you?

A. No, I was alone.

Q. Did you go to the vicinity alone?

A. Yes, but I was in radio communication at all times.

The Court: May I inquire how long you are going to be, if you know? I don't mean to hurry you, but we are at the point where we usually adjourn, but if it is going to be only a matter of a short time, I would let you continue, but if it is going to be an extended time, why, we

can go until tomorrow morning. I will let you decide that.

Mr. Pincham: May I decide on the latter course, go until tomorrow morning.

The Court: All right. You may be excused until tomorrow morning. Please don't talk to anybody about this case until you resume the stand. Ladies and gentlemen,
101 you may go until ten o'clock tomorrow morning.

Come through that door and go into the jury room. Will you lawyers wait for a minute.

(Thereupon the jury was excused, and the following proceedings were had out of the presence and hearing of the jury.)

The Court: With respect to Counts 1 and 2 of the indictment, I wish you would examine your notes or the transcript if you have one, and let me know what you think is a proper direction, Mr. Grady, to the jury with respect to the conversation about which we have had some discussion here, and see, in considering whether or not any conversations had by one defendant out of the presence of the other would be admissible depending on whether you had first tied them in under Section 2. With respect to the conspiracy count, there we must wait for the time when you have a prima facie case. I would like to suggest to you that you give it consideration. Write something up or dictate something, and show it to Mr. Pincham so that at a time we all think it is appropriate, we can tell the jury how they are to consider the evi-
102 dence in respect to each one of the three counts.

Don't you think that is the way to do it?

Mr. Pincham: Judge, let me ask you this, because I think you lost me. Insofar as Counts 1 and 2 are concerned, I am of the opinion that at no time when a conversation had out of the presence—

The Court: I will hear you on that. Perhaps you are right about it, but you check it. The question that occurs

to me is whether—let us assume that there is some sort of prima facie tie in here between the two defendants, then they separate and there is a conversation by the one defendant with somebody in relation to the alleged transaction. Is that conversation out of the presence of the other defendant admissible? You say no.

Mr. Pincham: Yes.

The Court: If that is true, and if that is the law, then I want to be fair with your client, and so direct the jury.

Mr. Pincham: Yes, sir.

The Court: On the other hand, in those circumstances we conclude it is admissible, such conversation, I want 103 to be fair to the Government.

Mr. Pincham: Right.

The Court: And we know what we have to do in the case of Count 12, the conspiracy count. I assume when the physical exhibits are in evidence, was may conclude—the Government may conclude, and I will let you argue your positions, but I want to get it clearly out of the way at the proper time. We will have a discussion about both questions out of the presence of the jury. I will hear you both fully.

Mr. Grady: Your Honor, may we have an order that the witnesses in this case return tomorrow morning.

The Court: Oh, yes. All the witnesses in the case of United States of America versus Jessie Maroy and Edward Minor, subpoenaed here, are directed to return here to Court tomorrow morning without any further notice, at ten o'clock.

(Thereupon, at 4:30 p. m., an adjournment was taken until ten o'clock, a. m. of the following day, January 3, 1957.)

104 IN THE UNITED STATES DISTRICT COURT
Northern District Of Illinois
Eastern Division

* * (Caption—No. 56 CR 429) * *

Before Judge Hoffman and a Jury,

January 3, 1957,
10:00 o'clock, a. m.

The hearing resumed pursuant to adjournment.

Appearances:
(Same as before.)

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105 The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor, cause on trial.

The Court: I believe we had a witness on the stand that you were cross-examining, Mr. Pincham.

Mr. Pincham: Yes.

The Court: You may continue with your cross examination.

JOHN A. GJERTSEN, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (Continued) by Mr. Pincham.

Q. Mr. Gjertsen, was May 10, 1956, the first time you had ever had a conversation with Jessie Maroy?

A. Yes, it was.

Q. Did you participate in the arrest of Jessie Maroy?

A. Yes, I made the arrest.

Q. Did you have any conversation with Jessie Maroy after May 10th and before you made the arrest of him?

A. No, I did not.

Q. Was May 10th, 1956, the first time that you had ever had a conversation with the defendant Edward Minor?

106 A. Yes, it was.

Q. Did you participate in the arrest of the defendant Edward Minor?

A. No, I did not.

Q. Do you know when the defendant Minor was arrested?

A. Yes, he was arrested on July 6 by Agent Emrich and Jack Love.

Q. Did you, after May 10th, and before the arrest of the defendant Edward Minor, on July 5th, 1956, have any conversation with Edward Minor?

A. Before his arrest?

Q. I will rephrase the question.

Did you have a conversation with Edward Minor at any time between May 10th and the time of his arrest?

A. Yes, I did.

Q. When was the second time after May 10th that you had a conversation with Edward Minor?

A. On May 11th.

Q. Did you have a conversation with Edward Minor after May 11th and before his arrest?

A. No, I did not.

Q. Now, on the 5th day of July, 1956, you saw the defendant Jessie Maroy, did you not, sir?

A. Yes, sir, I did.

Q. Where was Maroy on that date when you first saw him?

107 A. Coming out of the building located at 111 North Wood Street.

Q. You now know, do you not, Mr. Gjertsen, that the defendant Jessie Maroy on that date had a sister who resided at 111 North Wood Street? Did you know that, sir?

A. No, he had a common law wife, Atlas Rogers.

Mr. Pincham: I move that be stricken, if the Court please.

The Court: Yes, it may go out.

Mr. Pincham: And ask the jury to disregard it.

The Court: I instruct the jury to disregard the answer of the witness. Read the question to the witness.

(Last question read.)

By The Witness:

A. That is not true.

By Mr. Pincham:

Q. I asked you, did you know that?

A. Yes.

The Court: I would like to suggest, Mr. Witness, that you listen carefully to the questions of the lawyer as they are put to you.

The Witness: Yes, sir.

108 The Court: Listen carefully.

And answer the questions and do not go beyond the question, and do not volunteer any other information that you think you may have. Will you do it that way, please.

The Witness: Yes, sir.

Mr. Grady: Your Honor, the last answer that the witness gave, I believe, was responsive to the question "Did you know that"?

The Court: I am not talking about the last answer, Mr. Grady, particularly.

Mr. Grady: I am wondering if the original question could be repeated because I think there is confusion.

The Court: Yes.

Mr. Pincham: I submit, your Honor, that the answer was not responsive, and I move that it be stricken.

The Court: My impression is that it was not precisely responsive. Read the question please, the last question put to the witness by Mr. Pincham.

(Last question read.)

The Court: If you know, you may say so. If you
109 don't know, you may say you don't know.

The Witness: Of my own knowledge, I know that is not true.

Mr. Pincham: I move that that be stricken.

The Court: No, I think that is responsive.

Mr. Pincham: Very well.

The Court: That is his opinion.

By Mr. Pincham:

Q. Now, about what time was it that you saw Maroy leave the premises at 111 North Wood Street?

A. Around nine o'clock.

Q. A.M. or p. m.?

A. P.M., night

Q. Was he alone, or was he with someone?

A. He was with Edward Minor.

Q. Where were you when you saw him leave the premises at 111 North Wood Street?

A. Diagonally across from 111 North Wood Street in the construction area.

Q. Was there anyone else with Maroy besides Minor?

A. No.

Q. Were you alone?

A. Yes.

Q. Now at the time you saw Maroy and Minor leave the building, do you know whether or not there were
110 any other agents in the vicinity?

A. Yes, there were other agents.

Q. Will you name the other agents who were in the vicinity?

A. There was Agent David Spillane in the radio car.

Q. I didn't ask you what he was in. Just tell me the names of the agents that were there.

A. Agent David Spillane and Agent Jack Love and Agent Joseph Tremoglie.

Q. Now, was Agent Turnbou in the vicinity?

A. No, he was not.

Q. Was Special Agent Cross in the vicinity?

A. No, he was not.

Q. By the way, isn't the term "paid informer" used—

Mr. Grady: I will object to that question.

The Court: I will sustain the objection. He was not a special agent, Mr. Pincham.

Mr. Pincham: I beg your pardon.

The Court: The testimony is that he was a special employee. Is that right?

The Witness: That is right, yes.

By Mr. Pincham:

Q. A special employee?

A. Yes.

111 Q. Was this special employee on this five dollar per day salary at that time?

A. Yes, he was.

Q. Is he on a five dollar a day salary now?

A. No, he is not.

Q. When did he cease being on a five dollar a day salary?

A. After the case was completed.

Q. When was that?

A. On July 6th after the arrest of the defendants.

Q. Do you know at the time you saw Maroy and Minor leave the building exactly or just where Agent David Spillane was?

A. Yes.

Q. Where was Agent David Spillane when you saw Maroy and Minor leave the building?

A. He was proceeding south on Wood Street outside of the building.

Q. Was he in the 100 block on North Wood Street at that time?

A. Yes, he was.

Q. Do you know whether or not anyone was with Agent Spillane when he was proceeding south in the 100 block of North Wood Street?

A. Yes, Agent Jack Love.

Q. Was there anyone else with them?

112 A. No.

Q. Did you see Agent Tremoglie at the time you saw Maroy and Minor leave the building?

A. I saw his vehicle.

Q. Where was the vehicle of Agent Tremoglie?

A. On Washington Avenue heading west.

Q. Between what two streets?

A. Between Wood and the next street east.

Q. Now, would his automobile at that point be to the north of the building out of which Minor and Maroy came, or would the automobile be south of the building out of which Minor and Maroy came?

A. Southeast.

Q. Now, did you observe what Minor and Maroy did when they came out of the building?

A. Yes.

Q. What did Maroy do?

A. He proceeded to a 1956 Chevrolet sedan.

Q. Was the 1956 Chevrolet sedan parked?

A. Yes, it was.

Q. Where was it parked?

A. In the parking area immediately in front of the building located at 111 Wood Street.

Q. Was it facing north or south?

A. Facing east.

113 Q. Facing east?

A. East.

Q. And that was about the hour of 9:00 o'clock?

A. Yes.

Q. Can you now tell the jury the license number of the 1956 Chevrolet?

A. 2763440 Illinois 1956.

Q. 2763440?

A. Yes.

Q. 1956 Illinois license?

A. Yes.

Q. Registered to—

A. To Lydia Rogers.

Q. I didn't ask you that. Did Minor get into this automobile also?

A. Yes, he did.

Q. Did Minor get on the driver's side or the passenger side?

A. On the passenger side.

Q. Did anyone else get into that automobile besides Minor and Maroy?

A. No.

Q. And the car left the vicinity?

A. Yes.

114 Q. And when the car left, this 1956 Chevrolet left the vicinity, did you leave the vicinity?

A. Yes, I did.

Q. You left the vicinity after the 1956 Chevrolet left, isn't that correct, sir?

A. That is correct.

Q. And you were behind the 1956 Chevrolet, were you not, sir?

A. That is correct.

Q. Now, did you observe where the automobile in which Agent Spillane and Jack Love were riding, did you observe where that car was at the time you saw Minor and Maroy get into this 1956 Chevrolet?

A. Yes.

Q. Where was it at that time?

A. On the corner of Washington and Wood Street.

Q. Is that point north or south of the building in which Maroy and Minor came out of?

A. West of the buliding.

Q. And is that a point north, south, east or west of the point where the 1956 Chevrolet was parked?

A. East of the car.

Q. East of the car. In which direction did the 1956 automobile go?

A. South on Wood Street to Madison.

115 Q. Is Wood east or west of Hoyne?

A. East of Hoyne.

Q. Did you observe whether or not anybody got out of the automobile at the time it arrived at Madison and Hoyne?

A. Yes.

Q. Who got out?

A. Edward Minor.

Q. Did Maroy get out?

A. No.

Q. And, of course, you did not overhear any conversation, if any, between Maroy and Minor after they got into the car before Minor got out of the car, did you, sir?

A. No, I did not.

Q. Now, when Minor got out of the car, was the automobile on the south side or the north side of Madison Street?

A. North side, doubled parked.

Q. Heading south?

A. Heading west.

Q. On what street?

A. On Madison.

Q. Heading west on Madison. Was it to the east or west of Hoyne?

A. East of Hoyne.

Q. Now, when the car got to Madison, Mr. Gjert-
116 sen, it went south on Hoyne, is that correct, the 1956 Chevrolet?

A. It went west on Madison.

Q. It went west on Madison to Hoyne?

A. In the direction of Hoyne.

Q. Now, when Minor got out of the car, did you observe whether the car remained standing there or whether the car moved?

A. It moved.

Q. In which direction did it move?

A. It moved west.

Q. On Madison?

A. On Madison.

Q. When Minor got out of the automobile, where was your car?

A. East, to the rear.

Q. Approximately how far were you east to the rear?

A. Five car lengths, 40 feet.

Q. Did you stop your car when the 1956 Chevrolet stopped?

A. Yes, sir, I did.

Q. At that time did you see the automobile in which David Spillane and Jack Love were riding?

A. They were immediately behind me.

Q. No cars between your car and the car in which Love and Spillane were riding?

A. No.

117 Q. Did you see the automobile in which Tremoglie was riding?

A. No, I did not.

Q. Now, did you at that time when Minor got out of the car, did you at that time see Turnbou?

A. Yes, I did.

Q. Now, at the time Minor got out of the automobile, where did you see Turnbou?

A. Turnbou was standing at the curb at that time at Hoyne and Madison Streets.

Q. At what curb?

A. On the north side, on the northeast corner of Hoyne and Madison.

Q. Did you see Special Employee Cross?

A. No, I did not.

Q. When Minor got out of the automobile, did he enter the building?

A. No, he did not.

Q. Did he at any time enter a building after he got out of the automobile?

A. No, he walked to Hoyne and Madison and met with Agent Turnbou.

Q. Now, at the time he met with Agent Turnbou, did you at that time see Cross?

A. He wasn't in there.

118 Q. At that time, did you see the automobile in which David Spillane and Jack Love arrived?

A. Yes, they came right around me.

Q. They came in front of you?

A. Yes.

Q. And did you at that time see the automobile in which Agent Tremoglie was riding?

A. Yes.

Q. Where was it?

A. On the south side of the intersection of Hoyne and Madison.

Q. Did you observe where, if any place, Minor went after he left Turnbou?

A. Yes.

Q. Where did he go?

A. He left on foot and walked back to Madison, and I continued over to Washington and Hoyne.

Q. You saw Minor walked from the northeast corner of Hoyne and Madison?

A. Yes.

Q. In which direction did he go when he left the northeast corner of Hoyne and Madison Streets?

A. West.

Q. On Madison Street?

A. On Madison Street. He crossed the street.

119 Q. Did he cross the street after he was with Turnbou or before?

A. After.

Q. He crossed the street from the north side to the south side?

A. From the east side to the west side.

Q. That is from the east side of Hoyne to the west side of Hoyne?

A. Yes.

Q. And I take it he was still on the north side of Madison Street?

A. Yes.

Q. Which would make him at the northwest corner, is that correct?

A. That is correct.

Q. When he arrived at the northwest corner, where were you?

A. I turned right on Hoyne and proceeded to Washington.

Q. And you went by him, did you not?

A. Yes.

Q. When he was standing on the northwest corner of Hoyne and Madison, was that the last time you saw him before you left north on Hoyne?

A. Yes.

120 Q. Where was Agent Turnbou at the time you turned right on Hoyne proceeding north?

A. Entering his vehicle.

Q. Where was his parked vehicle?

A. Hoyne and Madison.

Q. Where on Hoyne and Madison?

A. Northwest side of the street.

Q. Was it on Hoyne, on the northwest side, or on Madison on the northwest side?

A. On Hoyne.

Q. It was on Hoyne?

A. Yes.

Q. Was it facing north or south?

A. Facing north.

Q. On the west side of Hoyne?

A. Yes.

Q. Did Minor get into that automobile?

A. No, he did not.

Q. This was approximately what time when you turned right on Hoyne northbound?

A. 9:15.

Q. Are you sure of that?

A. Approximately.

Q. Am I to understand you to state that the last you saw Minor on the evening of July 5, 1956, at approxi-
121 mately 9:15 in the vicinity of Hoyne and Madison, Minor was standing on the northwest corner of Hoyne and Madison Street?

A. He was in motion, walking.

Q. In which direction was he walking?

A. West.

Q. On Madison?

A. On Madison.

Q. Did he disappear from your view?

A. Yes.

Q. At the time he disappeared from your view, he was then walking west on Madison?

A. Yes.

Q. From the time you saw Turnbou on the northeast corner of Hoyne and Madison up to the time you saw him enter his automobile on the west side of Hoyne north of Madison, did you see Turnbou go any place else?

A. No.

Q. Did I not understand you yesterday to state that Turnbou entered the restaurant?

A. Yes.

Q. Did you see him enter the restaurant?

A. Yes.

Q. That is what I am asking you. When did he enter the restaurant?

122 A. He entered his car and he drove to the restaurant at Washington and Hoyne.

Q. Now, this restaurant you saw him enter at Washington and Hoyne, where was it located, on Washington or Hoyne?

A. On the corner, the northeast corner of Hoyne and Washington.

Q. Where were you when you saw Turnbou enter this restaurant?

A. About 40 feet to the rear of his vehicle. I was pulling into a junk yard.

Q. Now, at that time did you see the defendant Jessie Maroy?

A. No, I did not.

Q. At that time did you see the automobile in which you had previously seen David Spillane and Jack Love riding?

A. No, I did not.

A. At that time did you see the automobile in which you had previously seen Tremoglie riding?

A. No, I did not.

Q. Did anyone enter the restaurant with Turnbou?

A. He entered alone.

Q. Did you see Minor enter the restaurant?

A. Yes.

Q. Did he enter the restaurant alone or did he
123 enter with somebody?

A. He entered with a female.

Q. Now, did Minor enter the restaurant before Turnbou or after Turnbou?

A. After Turnbou.

Q. How long after Turnbou had entered the restaurant was it before Minor entered the restaurant?

A. About 15 minutes.

Q. Did you see Minor leave the restaurant?

A. Yes.

Q. How long was he in the restaurant before he left?

A. About two or three minutes.

Q. Did he leave alone? Did Minor leave alone or did he leave with someone?

A. He left with someone.

Q. Who did he leave with?

A. Agent Turnbou and an unidentified Negro female.

Q. When they left the restaurant, did they get into the car?

A. Yes.

Q. What car did they get into?

A. 1949 green Plymouth.

Q. Where was the car parked?

A. Outside of the restaurant.

Q. On Hoyne or on Washington?

124 A. On Washington.

Q. Who drove the car?

A. Edward Minor.

Q. Did you observe where the car went?

A. No, I did not.

Q. Now, at the time you saw Minor and the unidentified Negro female and Turnbou leave the restaurant, did you at that time see the defendant, Jessie Maroy?

A. No, I did not.

Q. Did you at that time see the automobile, the 1956 Chevrolet in which you had previously seen Jessie Maroy riding that evening?

A. No, I did not.

Q. After you last saw Jessie Maroy proceeding west on Madison Street at about the hour of 9:15, July 5, 1956, when was the next time you saw Maroy?

A. On July 6.

Q. Approximately what time?

A. 2:30 in the afternoon.

Q. Where was he when you saw him at that time?

A. Making a telephone call.

Q. Where was that?

A. Sacramento and Washington.

Q. That is when you placed him under arrest, isn't it?

125 A. That is correct.

Q. Now, in which direction did the automobile the green Plymouth, in which Minor and Turnbou—strike that.

Did this unidentified Negro female get into the green Plymouth?

A. Yes.

Q. So Minor is in the automobile?

A. Yes.

Q. Turnbou is in the automobile?

A. Yes.

Q. And this lady is in the automobile?

A. Yes.

Q. Anybody else in the automobile?

A. No.

Q. Did you see in which direction that automobile went?

A. It went south on Hoyne.

Q. Did you see the automobile stop?

A. No.

Q. Did you see Minor get out of the automobile?

A. No.

Q. Did you see Turnbou get out of the automobile?

A. No.

Q. Did you see this lady get out of the automobile?

A. No.

126 Q. Where was the automobile when you last saw it?

A. Headed south on Hoyne.

Q Between what two streets?

A. Washington and Warren.

Q. Now, when you last saw the automobile heading south on Hoyne between Washington and Warren, did you see the automobile in which David Spillane and Jack Love were riding?

A. No, I did not.

Q. Did you see the automobile in which Agent Tremoglie was riding?

A. No, I did not.

Q. Did you see the automobile, the 1956 Chevrolet in which you had previously seen the defendant Jessie Maroy?

A. No, I did not.

Q. Did you then see Jessie Maroy?

A. No, I did not.

Q. When did you next see Turnbou? Strike that. Where was Turnbou when you next saw him?

A. Returning to the restaurant.

Q. When he was returning to the restaurant was he alone or was he with someone?

A. He was alone.

Q. Was he walking or was he riding?

127 A. Riding a taxicab.

Q. Did you see him get out of the cab?

A. Yes.

Q. Did he go into the restaurant?

A. No, he entered his vehicle.

Q. Where was his vehicle parked again, please?

A. Right outside of the restaurant on Hoyne and Washington.

Q. Did you say anthing to him at that time?

A. No, I did not.

Q. I take it that he then proceeded downtown to the main office, is that correct?

A. Yes, sir.

Q. Now, when you saw Turnbou got out of the taxicab, did you at that time see Jessie Maroy?

A. No, I did not.

Q. Or the automobile in which you had previously seen him?

A. Yes, I did.

Q. Where was the automobile in which you had previously seen him?

A. When I passed Washington and Wood Streets, it was back in the parking area.

Q. Back in the parking area at Washington and Wood?

128 A. Yes.

Q. You didn't see Maroy at that time, though, did you?

A. No.

Q. You didn't see Minor at that time either, did you?

A. No.

Q. Do you know approximately what time it was when the defendant Edward Minor, was arrested?

A. Yes.

Q. Approximately what time was it?

A. About 11:30 a. m.

Q. That is on the—

A. July 6.

Q. Sixth of July, is that correct?

A. Yes.

Q. Where was Minor when he was arrested?

A. Room 43, Charles Hotel.

Q. Where is the Charles Hotel located?

A. Warren near Hoyne.

Q. And he wasn't with Minor? Minor was not with Maroy at the time he was arrested, was he?

A. No, sir, he was not.

Mr. Pincham: That is all.

The Court: Is there any redirect examination?

Mr. Grady: Just one or two questions.

129 *Redirect Examination by Mr. Grady.*

Q. Referring to May 10th again, Mr. Gjertsen—

A. Yes, sir.

Q. In the B & B Bar where you were sitting at the table when Edward Minor and Cross were at the bar?

A. Yes.

Q. Did you testify that you saw a package pass between them?

A. Yes, I did.

Q. And did you notice what the package looked like when it did pass?

A. It was a yellow package.

Q. You have previously seen Government's Exhibit No. 3?

A. Yes.

Q. For identification?

A. Yes.

Q. The yellow page from a telephone directory; is this what you saw pass between them?

Mr. Pincham: I object, if the Court please. This is

improper redirect. He testified to that previously on direct.

The Court: Hasn't he already testified to that?

130 Mr. Grady: This was gone into on cross-examination, your Honor, something about the distance—

The Court: I believe you did refer to it, Mr. Pincham, in the cross.

Mr. Grady: Apparently there was some attempt to go into it.

Mr. Pincham: He had already testified to it.

The Court: I think there are some valid grounds for asking the question. I will overrule the objection.

By The Witness:

A. That was the package.

By Mr. Grady:

Q. This was the package that you saw pass?

A. Yes.

Q. You are referring to Government's Exhibit No. 3 wrapped around Government's Exhibit No. 4 for identification?

A. Yes.

Q. Mr. Gjertsen, how many searches have you made in your seven years' experience as a narcotics agent, would you estimate?

A. Thousands.

131 Mr. Pincham: I object to that if the Court please.

The Court: What is the purpose?

Mr. Grady: Apparently there was some question on cross examination as to the effectiveness of the search that Mr. Gjertsen made. I would like to show his experience.

The Court: You did go into his educated fingers.

Mr. Pincham: Yes.

Mr. Grady: I won't confine it to the educated fingers.

The Court: I will overrule the objection.

Mr. Pincham: I will withdraw it.

By Mr. Grady:

Q. Will you answer that?

A. Thousands.

Q. One more question. You testified on cross examination concerning money paid by the Bureau of Narcotics to Thomas Cross. If you know, will you tell us whether or not Thomas Cross has been paid, or will be paid any money, depending on the outcome of this trial.

Mr. Pincham: Objection, if the Court please, to the form of the question.

The Court: It is something you inquired about.
132 You wanted to know about it. Let us hear all of it.

We don't want half of it, Mr. Pincham.

Mr. Pincham: I am objecting to the form of the question, whether or not he will be; that is conjectural.

Mr. Grady: No, I am asking him whether he knows. Mr. Gjertsen testified he was the man who makes out the papers.

The Court: I will let him answer. I will overrule the objection. Do you know what the question is?

The Witness: Yes, sir.

The Court: You may answer it.

By The Witness:

A. Yes, he will be paid. The papers were submitted to Washington.

Mr. Pincham: I object to the latter part and move it be stricken. The answer is merely yes.

The Court: I think you are right about that. Your answer it "Yes"?

The Witness: Yes.

The Court: The answer is yes, he will be paid. Let that answer stand. Other than that, I will strike the
133 balance of it and direct the jury to disregard it.

By Mr. Grady:

Q. Does the payment to Cross depend on whether or not the Government wins or loses this case?

Mr. Pincham: I object to that.

By The Witness:

A. Absolutely not.

The Court: You may answer. What was the answer? "Absolutely not"?

The Witness: Yes, sir.

Mr. Grady: That is all. No further questions.

The Court: Is there any recross, Mr Pincham, limiting your questions to the redirect?

Recross Examination by Mr. Pincham.

Q. You would fire him if he didn't get convictions, wouldn't you?

Mr. Pincham: I believe the witness has already testified he is no longer working for the Government.

Mr. Pincham. He is already fired.

The Witness: He no longer works for us.

134 Mr. Grady: That is all.

The Court: That is all. You may step down.

(Witness excused.)

The Court: Please call your next witness, Mr. Grady.

THOMAS CROSS, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grady.

Q. Will you state your name.

A. Thomas Cross.

Q. Where do you live Mr. Cross?

A. 1923 West Jackson Boulevard.

Q. Do you know either of the defendants in this case?

A. Yes, I know both of them.

Q. Jessie Maroy and Edward Minor?

A. Yes.

Q. Do you see them in the Courtroom today?

A. Yes.

Q. Will you point them out?

A. Over at the table.

Q. Will you state which is which?

A. The one in the short-sleeved sweater is Jessie,
135 and the one in the blue suit is Loose Tooth.

Q. Loose Tooth is Edward Minor, is that right?

A. Yes.

Q. Did you know him as Loose Tooth?

A. Yes.

Mr. Grady: May the record show that the witness has identified the defendants Maroy and Minor.

The Court: Are you satisfied that the witness has positively identified your clients?

Mr. Pincham: Absolutely.

The Court: Let the record show that the witness has identified the defendants.

By Mr. Grady:

Q. Mr. Cross, do you know Agent Gjertsen of the Federal Bureau of Narcotics?

A. Yes, sir.

Q. Calling your attention to May 10, 1956, were you with Agent Gjertsen that day?

A. Yes.

Q. Calling your attention to the afternoon of May 10, 1956, were you with Agent Gjertsen at that time?

A. Yes.

Q. Will you tell us where you were?

A. You mean when I was first with him?

136 Q. I will start from the time you were first with him.

A. We were in the office.

Q. In what office?

A. I think it was his office.

Q. What, if anything, happened in the office?

A. Well, something had happened to me personally.

Mr. Pincham: Objection to that.

By Mr. Grady:

Q. Just state—

The Court: You want the last answer stricken, Mr. Pincham? If you do, I will be glad to strike it.

Mr. Pincham: Let it stand, your Honor.

The Witness: We talked, and he asked me about these fellows.

Mr. Pincham: Objection to that answer, your Honor.

The Court: It is not responsive. I strike the answer and direct the jury to disregard it.

By Mr. Grady:

Q. What, if anything, did Agent Gjertsen do?

A. When we left the office, we went down to his car and he searched me in the car. Then we went to Madison Street on Hoyne, and we walked around down there for a while.

Q. Now, what happened after you were walking 137 around down there?

A. We saw Jessie and Loose Tooth pull up in a car which I recognized to be Jessie's car.

Q. By Loose Tooth, you mean Edward Minor?

A. Yes.

Q. All right, go ahead.

A. I recognized it to be Jessie's car and Johnny and I were standing on the other side of the street.

Q. By Johnny you mean Agent Gjertsen?

A. Yes. He and I were standing on the other side of the street, so I waved at both of them and they crossed over.

Q. By both of them, you mean Maroy and Minor?

A. Yes. They crossed over; they asked me where I had been.

Mr Pincham: I object to that.

The Court: I will sustain the objection. What you mean to say, you move that the answer be stricken.

Mr. Pincham: Yes.

The Court: I will allow the motion and direct the jury to disregard it.

By The Witness:

A. Jessie asked me where I had been and I told him since my wife died I had moved out South, and I
138 didn't have a chance to get back over too often because it was too difficult for me due to the fact I had no automobile.

By Mr. Grady:

Q. What happened after that?

A. So I told him, I said, "Look, I have got a friend with me." And he and I stepped over to the side.

Q. You and Jessie?

A. Yes, and I told him, "Look, I have got a friend of mine with me. He wants to put me in business. He don't want to spend too much money because he would like to see what I am going to do first. If I do all right the first time, he said he would do better, you know."

So he told me, you know, he says, " I don't do no business on the street. Besides, I don't do no business with no grays anyway. So if you want to talk about it, you have got to see my man."

So I came back to the crowd, Jessie and I, and I introduced him to Johnny.

Mr. Pincham: I cannot hear.

The Court: Yes, speak up a little, Mr. Cross.

The Witness: I am trying to talk as loud as I possibly can.

The Court: I don't want you to do that. Just talk so

that the lady at the far end of the box can hear you.

139 Mr. Grady: I will stand back here, and I will ask you to talk to me.

By The Witness:

A. Okay. So I came back into the crowd, and I introduced him to Johnny. I don't know whether or not I gave him their names or anything like that. I don't guess it was necessary. He probably knew it anyway.

By Mr. Grady:

Q. Did either of the defendants say anything at that time?

A. Johnny said something—Agent Gjertson said something.

Q. What did he say?

A. He said he wanted to do some business, you know.

Q. Who did he say that to?

A. I think he said it to Jessie.

Mr. Pincham: I move that that be stricken, your Honor.

The Court: Well, did he or did he not?

The Witness: He did. He said it to Jessie, and he said—Jessie told him that he did not do business with no grays, to talk to his man.

140 By Mr. Grady:

Q. Did he indicate who he meant by his man?

A. Yes, he meant Loose Tooth Minor.

Mr. Pincham: I am objecting to that and move that be stricken.

The Court: He meant Loose Tooth?

The Witness: Yes, sir.

The Court: What did you call him?

The Witness: Loose Tooth Minor.

The Court: You mean the defendant Minor?

The Witness: Yes.

The Court: That statement may go out.

Mr. Grady: The question is, did he indicate.

The Court: He didn't answer that precisely. We want to satisfy Mr. Pincham.

By The Witness:

A. Yes, he indicated a man—

By Mr. Grady:

Q. How did he indicate?

A. He nodded with his head towards Minor, so I told him what we wanted and he told us to go down to the bar on Madison.

Mr. Pincham: Just a moment.

141 By Mr. Grady:

Q. Who are you referring to when you say you told him what you wanted?

A. I am referring to Minor.

Q. All right.

A. So he told us to go down to Madison.

Mr. Pincham: I am objecting to that conversation as to the defendant Jessie Maroy.

The Court: I think that is a valid objection, Mr. Grady. The jury will consider the answer which the witness is about to give only as to the defendant Minor. Is that right, Mr. Grady? The Government offers it as to Minor?

Mr. Grady: That is right.

The Court: All right.

By Mr. Grady:

Q. So what happened then?

A. So he told us to go to the bar on Madison and Leavitt and wait for him.

Q. What did you do?

A. We walked down the street to the bar at Madison and Leavitt and went in there and drank a beer or so.

Q. You and who else? Johnny?

142 A. Me and Johnny, yes, and I saw him come

through the — there are two entrances into the bar. You can go in through the back, you know, it is a side entrance, not a back entrance. It has a side entrance and a front entrance. He came in through the side entrance.

Q. When you say "he", who do you mean?

A. Minor. He came in through the side entrance. He nodded to me, you know, as if to say everything was all right.

Mr. Pincham: I object to that, and move that it be stricken.

The Court: As if to say everything was all right, those words may go out and the jury will disregard them.

By The Witness:

A. He nodded to me that everything was all right.

Mr. Pincham: I am objecting to that, and move it be stricken.

The Witness: What shall I answer then.

The Court: You may describe the nod, tell what kind of nod.

By The Witness:

A. Well, he gave me a nod in this manner.

143 The Court: With the head up and down like that, is that what you mean?

The Witness: He gave me a nod in this manner.

The Court: Let the record show that the witness is moving his head vertically upward and downward. Is that accurate, Mr. Pincham?

Mr. Pincham: That is accurate.

The Witness: So Johnny gave me money.

By Mr. Grady:

Q. How much money did he give you?

A. He gave me $60.

Q. What did you do then?

A. I went over to the bar and gave it to him.

Q. Gave it to whom?

A. To Minor. He gave me the package of stuff. By the stuff, I mean heroin.

Q. Wait a minute. You gave Minor money, then what happened?

A. He gave me the stuff.

Q. Minor gave you the stuff?

A. Yes.

Q. By the stuff, what do you mean?

A. Heroin.

Q. Prior to the time Minor gave you the stuff,
144 did you give Minor a purchase order form as prescribed by the Secretary of the Treasury?

A. No.

Q. Mr. Cross, I show you Government's Exhibit No. 3 for identification, and ask you if you have seen that before?

A. Yes, I have.

Q. Will you tell us what that is?

A. It looks like—I believe that is the package that he gave me. It was wrapped in a telephone directory similar to that.

The Court: That who gave to you?

The Witness: That Minor gave me.

The Court: Try to use names instead of he and she.

By Mr. Grady:

Q. At that time Minor gave you this package or a package similar to that, was there something inside of it?

A. I didn't open it.

Q. You didn't open it?

A. No.

Q. Could you feel whether there was something inside of it?

A. Oh, yes, there was something inside of it.

145 Q. At the time you received that package from

the defendant Minor, were there any stamps on it, Federal tax stamps?

A. Oh, no.

Q. It was just a telephone page like this one here without any stamps on it, is that right?

A. Yes. So I gave—

Q. Now, excuse me just a minute. Did you have any heroin on your person prior to the time you went to the restaurant?

A. As I told you, he shook me down. I didn't have any.

Q. Just answer the question. Did you have any heroin on your person?

A. No.

Q. Did you have any other paper similar to Exhibit No. 3 on your person?

A. No.

Q. Prior to the time you entered that bar?

A. No.

Q. During the time you were in the bar, prior to the time you received this from Minor, did you acquire any other piece of paper similar to Government's Exhibit No. 3?

A. No.

Q. How was Agent Gjertsen dressed on that par-
146 ticular day. do you remember?

A. I think he had on — he had on a fatigue cap, some combat boots, and a short jacket. He had some tools strapped around his waist, and I think he had on a pair of fatigue pants.

Q. What did you do with the package after you got it from Minor?

A. Walked back to the table and gave it to him.

Q. Gave it to whom?

A. Johnny.

Q. Gjertsen?

A. Yes.

Q. Did you have any further conversation with Edward Minor or Loose Tooth at this time?

A. Oh, yes. I asked them, I told him I wanted to know where he would be.

Mr. Pincham: I object to that as to Mr. Marov.

The Court: This is offered as to the defendant Minor, and not as to the Defendant Maroy, is that right?

Mr. Grady: That is right.

The Court: The jury are so instructed.

147 The Witness: Answer it?

The Court: Yes, go ahead and answer it.

By Mr. Grady:

Q. What conversation did you have with Minor at this time?

A. I asked him where I could find him because I didn't want to be walking up and down the street looking for him because I had been having trouble over there, and I didn't want to be walking up and down the street. He gave me a phone number. I don't remember the phone number that he gave me, and I wrote it down on a card.

Q. What did you do with the card?

A. I gave it to Johnny, Agent Gjertsen. He gave me the phone number and told me the room number in the Charles Hotel. I remember the hotel because I used to live right down the street from there. He gave me the phone number and the room number and told me I could reach him there at any time, you know, just to call there and let him know I was coming.

Q. Do you remember what that room number was?

A. Yes, the room was No. 34.

Q. Mr. Gross, calling your attention now to May 22, 1956, did you see either of the defendants on that day?

A. Yes.

148 Q. Do you know Agent William Turnbou of the Federal Narcotics Bureau?

A. Yes.

Q. Did you see him on that date?

A. Oh, yes.

Q. Were you with Agent Turnbou at any time on that day?

A. Yes.

Q. Calling your attention to about 4:30 p. m. in the afternoon, were you with Agent Turnbou at that time?

A. Yes.

Q. Where were you?

A. We had left the office, and we went to the same place, Madison and Hoyne.

Q. The same place where you had been on May 10th?

A. Yes. We went to Madison and Hoyne to the tavern—no, we were sitting in the car first, and we saw Jessie and Minor pull up in Jessie's car.

Q. A Pontiac?

A. Yes, in the Pontiac.

Q. What happened after that?

A. So I told Bill to wait for me.

Mr. Pincham: Objection.

The Court: Why?

Mr. Pincham: Conversation, if your Honor please.

149 "I told Bill."

The Court: What is it?

Mr. Pincham: It is conversation out of the presence of the defendant.

The Court: It could be that is what happened next. What happened, did you have a conversation?

The Witness: I just told him to wait across the street for me.

The Court: Is that the next thing that happened?

The Witness: I told Bill to wait across the street.

By Mr. Grady:

Q. By Bill, who do you mean?

A. William Turnbou.

The Court: I think that is responsive.

By The Witness:

A. I told William Turnbou to wait across the street for me.

By Mr. Grady:

Q. What happend after that?

150 A. And I went over to see Jessie and Minor.

Q. They were across the street, were they?

A. Yes. They had just pulled up and got outside of the car, and they were standing by the car.

Q. They were standing by the Pontiac?

A. Yes.

Q. You walked over to them, is that right?

A. Yes.

Q. Then what happened after you got over there?

A. I told them that I had a friend with me that wanted to do some business.

Q. To whom did you say that?

A. I said it to Jessie.

Q. What did Jessie say, if anything, in response to that?

A. He said, "You know I don't do no business. See my man."

Q. Will you state whether or not Jessie indicated in any way by his behavior who he meant by his man?

Mr. Pincham: Objection, leading and suggestive.

Mr. Grady: I think as to whether or not—

The Court: I think the question is bad as to matter of form. You may ask the witness to tell what he

151 did, if anything. I will sustain the objection.

By Mr. Grady:

Q. Did Jessie do anything at the time he said, "See my man"?

A. He nodded again.

Q. Did he nod towards anyone?

A. He nodded towards Minor.

Q. What did you do?

A. I went and talked to him and told him—I told him what I wanted to do.

Q. You told Minor what you wanted to do?

A. I told Minor, I said, "I have got my man over here."

Mr. Pincham: Objection, your Honor, as to the defendant Maroy.

The Court: Was Maroy there at the same time?

The Witness: Yes.

The Court: I will overrule the objection.

By Mr. Grady:

Q. Maroy was standing right there at the same time?

A. Yes.

The Court: I want to get a ruling in there, Mr. Grady. I overruled your objection, Mr. Pincham.

152 By Mr. Grady:

Q. What did you say to Minor in the presence of Maroy at this time?

A. I told him I had a friend of mine that wanted to get an ounce of stuff.

Q. What did either of the defendants say to that? Which defendant replied?

A. Minor.

Q. What did Minor say?

A. Minor told me, he said, "Who is he", you know, and I told him, "He is all right. He is over there at the bar, you know."

He said, "Are you-all in a car". I said, "Yes."

Q. I beg your pardon. What about the car?

A. He asked me, "Are you-all in a car". I said, "Yes."

He said, "Where is it".

I said, "It is the green one across the street," meaning the 1953 Plymouth, I think it was. And he walked down—

Q. Who walked down?

A. Minor.

Q. Minor?

A. Walked down on the opposite side of the street by the car, towards the car and looked.

153 Q. Where was Maroy at this time?

A. He and I were standing there.

Q. While Minor walked off, is that right?

A. Yes, he and I stood there.

Q. Did you have any further conversation with Maroy while Minor walked off?

A. No.

Q. What did Minor do after he walked off?

Mr. Pincham: I didn't get the answer to the last question.

By The Witness:

A. No.

By Mr. Grady:

Q. What did Minor do when he left your presence, if anything?

A. He walked down the opposite side of the street to the automobile and looked at it. He came back and told me that "the car has got an awful lot of stickers on it."

Q. Was Maroy still standing there at that time?

A. Yes. He told me that "The car has got an awful lot of stickers on it, hasn't it?" I said, "Those are only yearly stickers that they buy." I said, "You can go over and look at it if you want to." I said, "The man is all right," speaking about William Turnbou. I said,

154 "The man is all right."

Q. What happened after that?

A. He said—

Q. Who said?

A. Minor said—

Q. All right.

A. Minor said, "Okay." He said, "Meet me on Albany and Warren—" No, Albany and Washington.

Q. Was Maroy there at the time?

A. Yes.

Q. All right.

A. So Minor got into the car and drove off in it and William Turnbou and I—

Q. Which car, the Pontiac car that he drove off in?

A. Yes.

Q. What did Jessie do then?

A. He waited.

Q. Jessie waited there while Minor drove off?

A. Yes.

Q. All right, did you see what happened after that?

A. So we went down to Washington, where we were supposed to meet him, and we could not find a parking space.

Q. When you say "we," who do you mean?

A. William Turnbou and myself.

155 Q. William Turnbou and yourself?

A. Yes. We could not find a parking space, and we drove around the block, and we came back and parked on Albany. We saw a car, and we came back and parked on Albany and walked up in the alley. When we got up in the alley, we met Minor. So Turnbou gave him the money and he gave him the stuff, and they made arrangements to meet after that, you know.

Mr. Pincham: I move that the latter part be stricken.

The Court: He made arrangements, those words and what follows may go out and the jury will disregard them.

By Mr. Grady:

Q. The three of you were standing in the alley, is that correct?

A. Yes.

Q. And you saw a transaction between Minor and Turnbou, is that correct?

A. Yes.

Q. Did you overhear a conversation between Minor and Turnbou?

A. Yes.

156 Q. What did you hear Turnbou say to Minor or Minor say to Turnbou?

Mr. Pincham: Objection.

The Court: Offered only as to the defendant Minor?

Mr. Grady: At this time.

The Court: All right, the jury is so instructed.

By Mr. Grady:

Q. Go ahead and tell what you heard them say to each other, if you will, please.

A. He told him, he said, "I would like to do business." He said, "I would like to do business with you more often," or "all the time". I cannot remember exactly the exact words. It is something to this effect. It has been quite some time ago, you know. He said, "I would like to do business with you more often. Where can I get in touch with you?"

Q. Turnbou said this?

A. That is what Turnbou said.

Q. To Minor?

A. Yes, and he introduced himself, and Minor introduced himself as Sammy.

So he told him how to get in touch with him.

157 Minor told Turnbou how to get in touch with him.

Q. Did you overhear what he said?

A. He told him he could get in touch with him through me.

Q. Through you?

A. Yes, through me.

Q. What happened after that?

A. We walked back—

Q. Was there anything else said at that time?

A. No. We walked back to the car and got in the car and came on back to the office.

Q. You and Turnbou?

A. Yes.

Mr. Grady: May I have the Court's indulgence a moment?

The Court: Oh, yes.

By Mr. Grady:

Q. While you were there in the alley with Turnbou and Minor, you stated before that you witnessed a transaction between the two. Exactly what did you see?

A. Turnbou gave him the money and he gave him the package.

Q. Do you remember what the package looked like?

A. The same thing, in a telephone directory.

158 Q. Are you sure it was a telephone directory?

A. Yes.

Q. A yellow page from the telephone directory?

A. Yes.

Q. Similar to Government's Exhibit No. 7 for identication?

A. Yes.

Q. Did you closely inspect the page?

A. No, I did not closely inspect anything. Turnbou had it.

Q. Mr. Cross, all that you have testified to happened in Chicago, Illinois?

A. Yes.

Q. Mr. Cross, in the past, have you used heroin?

A. Yes.

Q. Have you had any dealing with the defendant Jessie Maroy other than the ones you have described here today?

Mr. Pincham: Objection, if the Court please.

Mr. Grady: I am just asking whether there was any additional narcotics dealings with the defendant Jessie Maroy.

Mr. Pincham: I am objecting.

The Witness: No, I haven't.

The Court: Is your answer no?

159 The Witness: No, I have never dealt with him.

The Court: You don't object to that.

Mr. Pincham: No, not at all.

The Court: I will let the question and answer stand.

The Witness: I never bought nothing from him.

Mr. Pincham: I beg your pardon?

The Witness: I never bought nothing from Jessie.

By Mr. Grady:

Q. Did you ever discuss narcotics with him?

Mr. Pincham: I object to that.

The Court: I will sustain the objection.

Mr. Grady: May I argue that, your Honor, out of the presence of the jury?

The Court: Yes. It is time for the intermission. We will take a brief recess.

(The following proceedings were had out of the presence and hearing of the jury:)

The Court: You may step outside, please. Don't talk to anybody about this case until you resume the witness stand.

160 (The following proceedings were had out of the presence and hearing of the witness:)

Mr. Grady: Your Honor, I believe the testimony of this witness would be on occasions prior to the ones he has already testified about, he received information as to where he could obtain narcotics from the defendant Jessie Maroy.

The Court: I assume that would be the answer. Now I know that previous offenses may be shown, similar offenses to prove intent.

Mr. Grady: Yes. And it is for that purpose.

The Court: And I think the concrete offenses must be shown, but if you show me any case or an authority that permits such a question, I will permit the question and the answer, but in the way that the question was put, I don't think the form is right. The witness said he had never had any similar transactions with—

Mr. Grady: By that he meant he never purchased any directly from him.

The Court: That is right. Let us assume for the sake of this discussion that this witness would testify that
161 one or both of these defendants said to him on one or more occasions, "We will tell you how to get some heroin." I doubt that that is proper, but if you can show me a case that says it is—I know we permit evidence, and Mr. Pincham, you know this from your criminal experience in the case of other crimes. You may show the commission of other crimes not mentioned in the indictment as evidence of intent. If you may go further than that, I don't know, but I am always glad to be shown.

Mr. Grady: Well, I think your Honor is probably correct, and I suppose I would have to reason on these prior occasions the defendant was an accessory to the crime and therefore—

The Court: Without regard to whether or not—

Mr. Grady: I don't know whether—

The Court: No, I think to receive that kind of evidence would be error.

Mr. Grady: I don't want that.

The Court: I know you don't. You can reflect on it during the intermission. We will take a brief recess. Have you finished?

Mr. Grady: Yes.

162 The Court: We will take a brief recess.

(Brief recess.)

Mr. Grady: The Government has no further questions.

The Court: Is there any cross examination, Mr. Pincham.

Mr. Pincham: Yes, your Honor.

Cross Examination by Mr. Pincham.

Q. Were you a drug user on May 10th?

A. Yes.

Q. What kind of drugs did you use?

A. Heroin.

Q. Intravenously?

A. Yes.

Q. By intravenously, you mean—

A. With a needle.

Q. May I finish my question, please. You mean that you would put the heroin in what is commonly referred to among persons that use the drug as a cooker, is that right?

A. Yes.

Q. And a cooker is a small metal object, such as the mouth of a spoon?

163 A. A bottle top, yes.

Q. Is that right?

A. That is right.

Q. And you would strike a match and put a little heat under the spoon with the heroin or drug in the spoon, is that correct? You have to answer.

A. Yes.

Q. Now, the heroin or the drug that you put into the spoon would be in powder form, is that correct?

A. That is right.

Q. And when you applied heat to the powdered form, it would turn to liquid?

A. That is right. You give it a little shake and it would turn, otherwise some of it would be a chemical compound, whatever they use, milk sugar, would be left in the bottom.

Q. After it turns to liquid, you would take an eye dropper—

Mr. Grady: If the Court please, I object to this. It is beyond the scope of the direct examination, and secondly, I don't see the relevancy.

The Court: What is the relevancy, Mr. Pincham?

Mr. Pincham: I want to establish for the Court
164 and jury that this man is an addict.

The Witness: I am not an addict.

Mr. Pincham: And how it started.

The Witness: I am not an addict.

Mr. Pincham: Well, he was on May 10th.

The Witness: I am not no more now.

The Court: I don't think in my Court I will permit a witness to be degraded.

The Witness: I have found it very embarrassing, your Honor.

The Court: I will sustain the objection of the Government.

Mr. Pincham: All right. I will ask you this.

By Mr. Pincham:

Q. When did you first start using narcotics?

Mr. Grady: Same objection.

The Court: He has stated that he has used heroin. Beyond that, I shall not let you go. This witness is not on trial for anything.

Mr. Pincham: May I be heard on that, your Honor?

The Court: I will not permit you to be pursue the manner in which a person takes a drug. I won't let
165 you do it in this courtroom. I was about to stop you myself. You are a fine gentlemen. You know that is

not right.

Mr. Pincham: Judge, may I be heard?

The Court: Let us not do it.

Mr. Pincham: May I be heard on it?

Mr. Grady: I was waiting, your Honor. I thought there might possibly be some relevancy.

The Court: No, I shall not let you be heard.

Mr. Pincham: Well, Judge—

The Court: I will let my ruling stand.

Mr. Pincham: May I, Judge, inquire as to how long he was an addict?

The Court: No. He has said he is not an addict.

Mr. Pincham: No, he said on May 10th he was using drugs.

The Court: That doesn't mean that the man is an addict, and besides, there is nothing in medical science that says, that I know of, that destroys a man's mentality.

Mr. Pincham: May I for the Court recite Dean Wigmore on this very point?

The Court: I don't think your friend and my friend, Dean Wigmore, would want me to permit this kind of thing.

166 Mr. Pincham: Well, Judge—

The Court: Mr. Pincham, I will let my ruling stand. Please do not pursue that inquiry.

Mr. Pincham: Very well, your Honor.

By Mr. Pincham:

Q. When you went to the office of Agent Gjertsen on May 10th, did you go there alone or did you go there with someone?

A. I went alone.

Q. About what time was it that you arrived there?

A. It was in the afternoon a little after noon, I guess, around 1:00, something like that, 1:30, maybe.

Q. Prior to your going there, did you know Agent Gjertsen?

A. No, I didn't know him.

Q. Prior to your going there, did you know Turnbou?

A. No.

Q. Prior to going there, did you know David Spillane?

A. No.

Q. Prior to your going there, did you know Agent Tremoglie?

A. Tremoglie?

Q. Yes.

A. I am not too familiar with Tremoglie, not by that name. What is his name, his full name?

167 Q. You don't know a man by the name of Tremoglie?

A. I cannot identify him, no. I have heard the name mentioned, but I really cannot identify him.

Q. T-r-e-m-o-g-l-i-e. Do you know a man by that name?

A. I have heard the name mentioned, as I said, but I don't know him.

Q. Now, how long were you in this—on what floor is this office located?

A. On the 8th floor.

Q. And that is the New Post Office Building located at Canal and Van Buren?

A. Correct.

Q. When you arrived at the office, did you engage in a conversation with Gjertsen?

A. First I engaged in a conversation—

Q. Just answer my question.

A. Oh, yes, we talked.

Q. Did you engage in a conversation with Turnbou?

A. At that particular time?

Q. At any time that you were there in this office on May 10th.

A. Oh, no, not on May 10th.

Q. Did you on May 10th at this office have a conversation with Spillane?

A. Yes.

168 Q. And you later that afternoon left this office?

A. Yes.

Q. Approximately what time was it that you left the office?

A. Close to four, I should say.

Q. When you left the office, who did you leave with?

A. Gjertsen.

Q. Did you leave in an automobile?

A. Yes.

Q. Where was the automobile parked?

A. On the west side of the Post Office, on a little side street, I am almost sure it was.

Q. Was it day or light or dark when you entered that automobile?

A. It was still light.

Q. Did anyone enter the automobile besides yourself and Gjertsen?

A. No.

Q. After you entered the automobile, what happened? Did you go some place? I will withdraw the question. You were searched, were you not?

A. Yes.

Q. By whom were you searched?

A. Gjertsen.

Q. Where were you when you were searched?

169 A. Right outside of the Post Office in the car.

Q. How long had you been upstairs in the office before you came downstairs in the car?

A. About three hours.

Q. Did you see Gjertsen in the office when you first arrived there?

A. No, I saw George Emrich, first.

Q. How long had you been in his office before you first saw Gjertsen?

A. Maybe half an hour.

Q. Did Gjertsen leave at any time after you first saw him and before you left with him?

A. Do what? I did not understand.

Q. Did Gjertsen at any time leave the office after you saw him, a half an hour after you had arrived there, and before you and he left together?

A. I think he went to get some money.

Q. He left, did he not?

A. Yes.

Q. Approximately how long was Gjertsen gone before he returned?

A. He was just gone a short while.

Q. About five minutes?

A. Something like that.

Q. How long had he been back before you and 170 Gjertsen left?

A. Oh, I don't know. I guess an hour or so.

Q. From the time you first went to the office about noon up to the time you and Gjertsen left together, did you leave the office?

A. No.

Q. And this search took place in the car?

A. Yes, sir.

Q. What did you have on? What wearing apparel did you have on?

A. I had a gray suit on and a red shirt and a short-sleeved sweater and a gray hat, and a pair of black shoes.

Q. Did you take your hat off?

A. Yes, at one time or other, I know I took it off.

Q. Did Gjertsen take it off when he was searching you?

A. No.

Q. Did he take your coat off?

A. I think it was kind of warm.

Q. I am not asking you that. I am asking you, did Gjertsen take your coat off when whe was searching you?

A. No, I had it off. I had it on my arm.

Q. Did you give it to him in the course of the search?

A. He went through it.

Q. Did you take your sweater off?

A. No.

171 Q. Did you take your trousers off?

A. Of course not.

Q. Did you take your shoes off?

A. No.

Mr. Grady. Your Honor, I think this line of questions is again calculated to degrade this witness. It is the same testimony that was—

The Court: I would rather it had not been gone into, but there has been some testimony by the agent concerning a search.

Mr. Grady: But the agent has already answered these questions, I presume to the satisfaction of Mr. Pincham.

The Court: Evidently he is not satisfied.

Mr. Grady: Asking this witness whether he took his pants off, I think that is something which—

The Court: I would prefer that that question was not asked, but it was asked and answered and I will let the answer stand. I would like to suggest to you, Mr. Pincham, that you be as discreet as you can if you are going to pursue this line further. I think you are entitled to ask about it in general.

172 By Mr. Pincham:

Q. Now, you and Gjertsen left the vicinity of Canal and Van Buren, did you not?

A. Yes, sir.

Q. Who was out in the car?

A. He was, Gjertsen.

Q. At that time you knew him as Johnny; did you at that time know him as Gjertsen?

A. I knew his full name. He had been introduced to me.

Q. And where did you go?

A. We went to Hoyne and Madison first, and we parked the car and got out.

Q. All right. Now, where was the car parked?

A. On Hoyne facing north.

Q. North or south of Madison?

A. It was on the north side of Madison facing north.

Q. When you got out of the car, did you go some place?

A. Yes.

Q. Did you go some place alone or were you with somebody?

A. I was with him all the time.

Q. Where did you go when you got out of the car?

A. First we went into the tavern right there on the corner.

Q. On what corner?

173 A. On the northeast corner.

Q. Of what streets?

A. Hoyne and Madison.

Q. Did you go in there to drink in the tavern?

A. No, not then.

Q. How long were you in the tavern before you left?

A. We just went in and looked around and waited, I guess, about five minutes, then we left.

Q. When you left from the tavern, did you leave with Gjertsen?

A. Yes.

Q. When you left the tavern, did you go some place at that time?

A. Yes, we did.

Q. Where did you go?

A. We walked down to Damen and Madison, and we went into that tavern there.

Q. Where is the tavern located on Damen and Madison?

A. Northwest side of the street.

Q. Is it on Madison or is it on Damen?

A. It is right on the corner.

Q. Does it face Madison or face Damen?

A. It faces both sides. They have a side entrance.

Q. Did you go into that tavern?

A. Yes.

174 Q. Did you go in there alone or with someone?

A. He went in with me, Gjertsen.

Q. Did you have anything to drink there?

A. No.

Q. How long were you in that tavern, approximately, in minutes before you left?

A. We went in and looked in and came right back out. We were in there no time.

Q. When you left the tavern on the northwest corner of Damen and Madison, did you then go some place?

A. Yes.

Q. Where did you go then?

A. We walked down on Wolcott.

Q. On what street?

A. Wolcott and Madison.

Q. Wolcott is either east or west of Damen?

A. Let me see. Wolcott is 1900 west and Damen is 2000 west, so it is east of Damen.

Q. When you left the tavern on the northwest corner

of Damen and Madison, you proceeded one block further east, is that correct?

A. There is another short street that comes in there, so it is two blocks.

Q. Did you go any place at Wolcott and Madison?

175 A. We looked in the restaurant. We stopped there in the restaurant.

Q. Did you stop in the restaurant?

A. We went in and looked around.

Q. Where is this restaurant located?

A. It is on the northwest corner of—

Q. Of Wolcott?

A. And Madison.

Q. And Madison?

A. Yes.

Q. How long were you in this restaurant before you came out?

A. We didn't spend no time there.

Q. When you came out of the restaurant, did you go some place else?

A. We crossed the street to a tavern.

Q. When you crossed the street, you crossed Madison Street?

A. Yes.

Q. You crossed from the north side of Madison to the south side of Madison, is that correct?

A. That is right.

Q. And you say you went into a tavern on the southwest corner of Wolcott and Madison?

A. Yes.

176 Q. Was Gjertsen with you at that time?

A. Yes.

Q. How long were you in that tavern before you came out?

A. No time. We just went in there and looked around and came back out.

Q. When you left the tavern on the southwest corner of Wolcott and Madison, did you again go some place?

A. We proceeded back west.

Q. And on what side of the street were you?

A. Well, we walked down the south side first.

Q. You walked down the south side of Madison Street?

A. Then we crossed over to the north side.

Q. At what street did you cross from the south to the north side of Madison Street?

A. I think it was Damen.

Q. And when you crossed from the north to the south side of Madison at Damen, in which direction did you then go?

A. We kept going west.

Q. On Madison?

A. Yes, because I wanted to look in that tavern again.

Q. Did you look into it again?

A. No, it was not necessary.

Q. I take it you then saw the defendants, Jessie
177 Maroy and Minor?

A. Yes, we saw them pull up on the other side of the street and park in front of the cleaners.

Q. That is located on Madison, is that correct?

A. Yes, sir.

Q. What street were they immediately east of when they parked?

A. They were east of Hoyne.

Q. Approximately how far in feet were they east of Hoyne?

A. There is another street that comes in there named Seeley. They were between Seeley and Hoyne. I just cannot pinpoint where the man was parked.

Q. Who was driving the car?

A. Jessie.

Q. Jessie Maroy?

A. Yes.

Q. And at that time you were on what side of the street?

A. We were on the north side.

Q. Did you see Maroy get out of the car?

A. We saw the car pull up—

Q. Did you see Maroy get out of the car?

A. Yes. He got out of the car. We were about a block away. They got out of the car and disappeared in a building some place or a store.

178 Q. Did you see what building they disappeared into?

A. I couldn't see. It was too far.

Q. After Maroy got out of the car, and before he disappeared in this building, where was Maroy when you last saw him?

A. Make that a little clearer, will you. I cannot understand it.

Q. You told the Court and jury you saw Maroy get out of the car, is that correct?

A. Yes.

Q. And you saw him standing on the ground, is that correct?

A. Yes, sir.

Q. And you saw Minor standing on the ground?

A. Yes.

Q. Is that correct?

A. Yes.

Q. You were about a block away at that time?

A. That is right.

Q. Now, after you saw him standing on the ground and before he disappeared from your view, can you now tell the Court and jury where Maroy was when you last saw him, that is, before he disappeared from your view in this building.

A. He was coming around the side of his car to
179 get up on the sidewalk.

Q. On the south side of Madison Street?

A. Yes.

Q. Did you see in what direction he went when he got on the sidewalk on the south side of Madison?

A. He just disappeared into the building I told you.

Q. You didn't see him?

A. I think a bus or a big truck or something might have been passing that cut our view off.

Q. After the bus or truck passed that cut off your view, after the truck passed, and the bus had gone by, you did not then see him?

A. No, he was gone.

Q. Was Minor also gone?

A. Yes, both of them were gone.

Q. Where was Maroy when you next saw him?

A. We stood around outside—

Q. No, I am just asking you, Mr. Witness, where was Maroy when you next saw him?

A. Coming—no, he was by his car.

Q. Was he on the passenger side or the driver's side of the car?

A. They were on the sidewalk, on the passenger side.

Q. Was Maroy and Minor together then at that time?

A. Yes.

180 Q. Where were you when you saw them?

A. Across the street, directly across the street from them.

Q. At the time he disappeared from your view, was Agent Gjertsen with you at that time?

A. Yes.

Q. Now, from the time that he disappeared from your view up to the time you next saw him standing on the passenger side of his car, approximately in minutes, how long was that?

A. Oh, maybe five minutes.

Q. Five minutes, is that correct, sir?

A. I just assume five minutes; approximately five minutes, you know.

Q. And you didn't see him after he disappeared from your view up until the time you saw him standing by his car?

A. Yes.

Q. Did you see where he came from?

A. No.

Q. Did you see where Minor came from?

A. No.

Q. Did you see whether or not they were together at the time they arrived back at the car?

A. When I saw them again, they were together.

181 Q. Now at that time, I believe you told the Court and jury that somebody waved, is that correct?

A. Yes.

Q. Who waved?

A. Jessie.

Q. At that time he was on the south side of Madison Street, is that correct?

A. Yes.

Q. And you were still on the north side of Madison Street, is that correct? Just answer for the reporter.

A. Yes.

Q. Now, when you saw Maroy and Minor prior to their disappearing from your view—strike that.

Before Maroy waved at you, you or Gjertsen had gone over to the car you had seen Maroy get out of, had you?

A. No, we didn't go over to the car.

Q. When Maroy waved at you, did you go over to where Maroy was at that time?

A. No, he came across the street to where we were.

Q. He and Minor?

A. Yes.
Q. Is that correct?
A. That is right.
Q. When he came over to where you and Gjertsen
182 were, will you tell the Court and jury as nearly as you can recollect the exact conversation that took place between you, Maroy, Minor, and Gjertsen.
A. I spoke.
Q. What did you say when you spoke?
A. "Hey, fellows, what is happening?"
Q. When you said that, who was the next person that said anything?
A. Jessie.
Q. What did Jessie say?
A. He asked me where I had been.
Q. Who was the next person who spoke.
A. Minor.
Q. What did Minor say?
A. He spoke to me.
Q. Who was the next person that said anything?
Mr. Grady: That last answer was not responsive to the question. The question was what did he say, and his answer was "He spoke to me."
The Court: Yes.
By Mr. Pincham:
Q. What did he say?
A. He said, "Hey."
Q. And after Minor said, "Hey," what did you
183 say, if anything?
A. I pulled Jessie to the side.
Q. You pulled Jessie to the side?
A. Yes.
Q. Now, when you say you pulled Jessie to the side—
A. By that I mean I said I wanted to talk to him.
Q. And you and Jessie stepped away from where Minor and Gjertsen were standing, is that correct?

A. Yes.

Q. Approximately how far did you move from where Gjertsen and Minor were standing?

A. About as far as from here to there.

Q. I didn't hear you.

A. About as far as from here to right there.

Q. You are pointing to the end of the jury box?

A. Yes.

Mr. Pincham: Indicating for the record, Mr. Grady—

Mr. Grady: Indicating for the record a distance, would you say, about five feet?

Mr. Pincham: That is good enough, five feet.

By Mr. Pincham:

Q. When you and Maroy walked away a distance of approximately five feet from where Minor and Gjert-
184 sen were standing, you then engaged in a conversation with Maroy, is that correct? You have to answer so that the reporter can write down what you say.

A. Yes.

Q. And at that time, had Gjertsen said anything to either Minor or Maroy?

A. He just nodded his head at that particular time, you know.

Q. Now, up to the time that you and Maroy walked off approximately five feet from where Gjertsen and Minor were standing, Gjertsen had said nothing, is that correct?

A. If he said anything, I didn't hear him.

Q. Had Maroy said anything other than what you have told this Court and jury?

A. At this particular time?

Q. Yes, as and of the time that you and Maroy walked approximately five feet from where Gjertsen and Minor were standing, had Maroy said anything else besides what you have already told the Court and jury.

A. No, not then.

Q. Not then?

A. No.

Q. Now, will you tell the Court and jury as nearly as you can recollect the conversation that you and
185 Maroy had at this time when you and Maroy were standing approximately five feet from where Minor and Gjertsen were standing?

A. I told him that I have got a friend of mine that wanted to put me in business.

Q. Yes.

A. And I wanted to get a half a piece of stuff.

Q. Yes.

A. I said, "He don't want to spend too much money yet, because he wants to see what I am going to do first," you know, and he told me—Maroy told me, he said, "Well, I don't do business on the street, and besides, I don't do business with no grays, noway, so if you want to talk business, you have got to see my man."

Q. Anything else?

A. I said, "Okay," and we stepped back to the crowd.

Q. By stepping back to the crowd, you mean you stepped back to where Minor and Gjertsen were standing?

A. That is what I mean.

Q. When you got back into the crowd, who was the first person that said anything?

A. I think I was.

Q. What did you say?

A. I introduced him to Johnny.

Q. When you introduced him, you are referring to
186 Gjertsen as Johnny, is that correct?

A. Yes.

Q. When you introduced him as Johnny, did Minor say anything?

A. You mean did he give his name or anything like that?

Q. Did Minor say anything?

A. He said "Hello."

Q. Did Maroy say anything?

A. I think he nodded his head. I don't know whether or not he said anything. I think he nodded his head.

Q. What else was said, if anything?

A. Well, he shook hands, and Johnny told him about doing some business. They wouldn't do nothing and he told him, he said, "I don't take care of no business."

Q. Who said that? Take your hand down from your mouth so that I can hear what you say. Go ahead.

The Witness: Your Honor, could I say something to this gentleman?

The Court: No, but I will.

Mr. Pincham, if you want me to direct the witness to do anything, I will do it. Make your request to me. I think that is the way to do it.

Mr. Pincham: I certainly will.

The Court: Does that satisfy you?

187 The Witness: Yes, it does.

The Court: At this point we will take a recess until 2:00 o'clock. I direct you, Mr. Witness, not to talk to anybody during the intermission, until you resume the witness stand, about this case. You can talk about anything else, but not about this case.

(Thereupon, at 12:30 p. m., a recess was taken until 2:00 p.m. of the same day, January 3, 1957.)

188 IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

Before Judge Hoffman and a Jury,
January 3, 1957,
2:00 o'clock, p. m.

The hearing resumed pursuant to recess.

Appearances:
(Same as before.)

The Clerk: 56 CR 429, United States of America versus Jessie Maroy and Edward Minor, cause on trial.

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Is there anything before the jury comes in?

Mr. Pincham: Yes, your Honor. The Court left me with the impression, and Mr. Grady, that I was attempting to degrade the witness Cross, at the time I was
189 inquiring of his addiction to the use of drugs. I would like, if I may, Judge, to call your Honor's attention the case of U. S. versus Fletcher, which is 158 Fed. 2d in which the defense requested an instruction to the jury on the question of addiction to narcotics of the informer, which instruction the Court refused, and the Court's refusal to give that instruction on appeal was assigned as error. The appellate court decided that the refusal to give that instruction constituted reversible error, and stated further that—

The Court: You say stated further. Tell me the language why they said it was reversible error.

Mr. Pincham: And in this case, Judge—

The Court: Did the lawyer in that case try to elicit from the witness the manner of preparation of a drug for injection into the arm with a hot cooker and all that business? Did the Supreme Court, or whatever court that was, the Court of Appeals—

Mr. Pincham: This was the Court of Appeals.

The Court: —say that that was the thing to do.

Mr. Pincham: Well, Judge, it was my desire, of course, I did want to, as your Honor advised me, not to belabor the point to the jury.

The Court: Oh, don't get that impression at all. If you think you are right, you can, with dignity, and with
190 as much force as you like, oppose me. I am not always right. I thought I was right about that. If you show me where some responsible court—

Mr. Pincham: Well, Judge—

The Court: —said that I was wrong in that, in the first place I will be very much surprised, but it won't be the first time I have been surprised.

Mr. Pincham: It was my intention, Judge, to show by cross examination of this witness—

The Court: No, you tell me where the reviewing court said I was wrong where you want to show me an authority to show I was wrong in stopping that kind of examination.

Mr. Pincham: Are you reading from the opinion or are you reading from the brief?

Mr. Pincham: I incidentally wrote the brief.

The Court: I don't want your language. I want the language of the Court of Appeals.

Mr. Pincham: "No other motive than his own advantage impelled him in all that he did."

That is referring to the transaction about which this particular informer, who was an addict, testified, and this man was an informer for the Government. Continuing:

"And when this is added the well recognized fact
191 that a drug addict is inherently a person where his own interests—"

The Court: Who said that?

Mr. Pincham: This is the Court.

"It is manifest either that some corroboration of his testimony should be required or at least it should be received with suspicion and acted upon with caution."

The Court: All right. He has admitted he took heroin, but he denied he was an addict. Where does it say in that opinion, if it does, that you may take him through that gory gruesome process of the preparation of a drug to be injected into the human body. Does it say that?

Mr. Pincham: May I point this out to your Honor, that at the point where the objection was made to my pursuing that form of cross examination, and it was sustained, I then proposed or attempted to establish how long he had been using drugs, how much drugs he was using, when was the last time prior to May 10th that he used drugs. Now, he said when he went there on May 10th he was addicted to drugs, and the Court advised me at that time you would not let me go into it.

The Court: What medical authority is there for saying that a man who is a sick man, a man who is addicted to drugs is a sick man, what medical authority is there 192 for saying that the man necessarily will commit a felony by perjuring himself?

Mr. Pincham: Well, Judge—

The Court: I don't know of any such thing, and I don't know that any Court of Appeals judge or Supreme Court justice or District Judge will say that is a fact.

Mr. Pincham: But, Judge, we do have this. As Dean Wigmore points out in the third volume, Section 934 of his treatise:

"Any diseased impairment of the testimonial powers arising from whatever source ought also to be considered in determining the credibility of witnesses."

The Court: All right. He testified—this man has admitted it. The Government brought it out on direct, asked him whether he ever used heroin, and he said yes.

He said to you that he had had heroin on the particular day, what was it?

Mr. Pincham: No, he said he was using heroin as of that day. He didn't say he was addicted as of that day.

The Court: He denies he was an addict.

Mr. Pincham: As of now. I would like to establish by cross-examining this witness whether or not, at the time these particular transactions about which he has testified, he was then using narcotic drugs.

193 I would go one further, in a recent case, and I realize, Judge, that the case I am about to give your Honor was decided by the Illinois Supreme Court, but in a recent case decided by the Supreme Court of the State of Illinois, People of the State of Illinois versus Paul Crump, the same issue was raised, and the conviction was reversed on the ground that the trial court refused to permit defense counsel to cross-examine a witness for the State who also was accused of participating in this offense as to his use of narcotic drugs during the time that the particular things about which he was testifying occurred.

The Court: Now, Mr. Pincham, I was not so much concerned about that. This man has admitted frankly that as and at the time in question, May 10th, he was a user of drugs. That is before the jury. Now, if you want to ask this witness when he started to use heroin—

Mr. Pincham: I would like to.

The Court: And when he stopped, if he has stopped, if he has stopped, and when was the last time he had any. I think you have a right to do that, and I thought I had given you that right, and I do that, Mr. Grady—I would let counsel do that because you yourself invited

the inquiry in direct examination. You asked him whether he took—

194 Mr. Grady: I asked him whether he was a user.

The Court: —whether he took heroin. I will let you do that.

Mr. Pincham: Yes, I realize, Judge—

The Court: But that other business of—

Mr. Pincham: I won't go into that at all.

The Court: That drama that you exercised, your lesson in chemistry, whatever you want to call it, I don't think was proper, and I don't think you think it is proper.

Mr. Pincham: Well, then, the only thing I really want to ask him, Judge, is when he started, when he stopped, the greatest amount that he used at the time he was using it and the approximate cost of it when he was using it.

The Court: Does the law say that cost enters into it.

Mr. Pincham: I would say, Judge, that certainly would go to the question of credibility.

Mr. Grady: I don't know why it would, your Honor. I think the implication here—

The Court: I don't think there is any definite market. Maybe there is. Maybe you can inquire among some of your distinguished clients as to what the market is. I don't know that there is any market. I have tried many of these cases. There is a different price paid per grain—

Mr. Pincham: As to what he paid, Judge.

The Court: I think these men who are addicts

195 want it, they will pay any amount of money they can afford to pay, isn't that right?

Mr. Pincham: That is my impression.

The Court: I don't think you can establish a market price for a drug that is illicitly purchased any more than in bootlegging days there was any standard price for whiskey, good or bad. Sometimes they paid a larger price for bad whiskey than they did for good.

Mr. Pincham: All right, Judge.

The Court: I don't think that is material. I will let you inquire in a dignified way along this line.

Mr. Cross, you said you had on occasion used heroin. You may ask him when he first started it, and you may ask him whether he still uses it today.

Mr. Grady: He has already answered that.

The Court: What is that?

Mr. Grady: He has already answered that question.

The Court: He said he is not an addict, but that doesn't mean—

Mr. Grady: Maybe I am wrong.

The Court: He said he was not an addict. I suppose when he says he is not an addict he means he can control his use of it. If he hasn't found out, he will find out differently, I suppose. They all start out with the notion that they will never become addicts.

196 Mr. Pincham: They do.

The Court: Is that right?

Mr. Pincham: That is my impression.

The Court: I will let you make that kind of inquiry, but leave out that awful stuff.

Mr. Pincham: All right.

The Court: If you have any objection to that, I will hear your objection.

Mr. Grady: I do have this objection, your Honor. I have an objection to the relevancy of it. I do agree with your Honor that I opened it up on direct examination, and to the extent that the inquiry is relevant, I agree that counsel does have the right to cross-examine on the subject. However, I think that underlying counsel's assertion that it is relevant is the assumption that this man is—that his addiction makes it likely that he will commit perjury.

The Court: Well, some court has evidently said that.

I am not sure that is right. I don't know that it is wrong, but this witness—

Mr. Grady: May I go further, your Honor?

The Court: Yes, this witness has been already—I don't mean this to an authoritative opinion, and it is not even for me to express an opinion on the evidence, certainly not in the presence of the jury, but he has been
197 corroborated to a certain extent by a witness already, so we take care of that by proper instruction.

Mr. Grady: But I think that the witness has already testified that at no time has any payment to him been conditioned upon the outcome of this case.

The Court: Oh, I won't let him inquire as to how much it cost.

Mr. Grady: Therefore, your Honor, I don't see how his addiction is relevant unless that, to some extent, would be based—

The Court: I will let him inquire along the limited lines that I suggested. First, because the Government invited the inquiry by asking it, and secondly, in the event of a conviction here, let some, let us say reviewing court, either the Court of Appeals or the Supreme Court say that I should have let it in on the ground suggested by Mr. Pincham, that he read some opinion that anyone who is accustomed to taking such a drugs is unreliable, and has a tendency to commit perjury. Well, we have heard that some of these fellows will commit other crimes in order to get money to pay for heroin in these illicit markets. I had never read that case saying that there was a tendency to commit perjury. I wouldn't be prepared to agree with that as a scientific conclusion. I have never seen it put down in any authoritative work. It
198 may be there.

Bring in the jury, Mr. Marshal, please.

Mr. Grady: Perhaps if we establish that he is not

using heroin now, whether or not this man is committing perjury is something which is happening today on this trial or not, so perhaps with the first question: "Are you using it now," if the answer to that is in the negative then I think we probably foreclose the necessity of going back any further, and asking when he first started to use it, because if his addiction or not is influencing his testimony in any way, it is happening today, and I think the inquiry ought to be limited to the use or non-use of heroin right now.

The Court: I will let you ask questions along the line I suggested and I hope you will be fair about it, Mr. Pincham.

Mr. Pincham: I will do my best to be fair, I am sure.

(The following proceedings were had in the presence and hearing of the jury.)

THOMAS CROSS, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross Examination (continued)

199 The Court: Will you continue with your cross examination of this witness, Mr. Pincham, please.

By Mr. Pincham:

Q. Mr. Cross, about when was it that you first began using narcotic drugs?

A. 1946.

Q. When did you stop using narcotic drugs?

A. 1956.

Q. What was the greatest amount of drugs you used in one day?

A. I don't know.

Q. Now, on the 10th day of May, on the north side of Madison Street, after Maroy made the statement which you have related to the jury, did you go some place?

A. Yes, I went down to the corner of Wood.

Q. Did you go alone or did you go with someone?

A. Mr. Gjertsen and I went together.

Q. That was in which direction?

A. West.

Q. And in which direction did Minor go?

A. He got in the car.

Q. In what car?

A. In Jessie's car.

Q. His car was parked diagonally across on the 200 south side of Madison Street from where you were standing, is that correct?

A. I didn't say diagonally across. I said directly across.

Q. All right, I am sorry. When Minor proceeded across Madison Street to the car you and Gjertsen proceeded west on Madison, is that correct?

A. Yes.

Q. Now in which direction did Jessie Maroy go?

A. Well, we walked down the street, and I didn't look—

Q. My question is, in which direction did Maroy go?

A. If I remember correctly, they went back to the car and got in.

Q. When Maroy went back to the car, he went in a southerly direction from where he was standing, is that correct?

A. He went in what direction?

Q. In a southerly direction across Madison Street?

A. Yes.

Q. And did Maroy and Minor go together across Madison Street to the car?

A. Yes.

Q. Did Maroy get into the car?

A. Yes.

Q. Did Minor get into the car?

A. Yes.

201 Q. Did the car leave?

A. Yes, sir.

Q. Who was driving the car?

A. I didn't look to see all that.

Q. But you did see the car leave?

A. Yes.

Q. When the car pulled away from the curb, I take it you and Gjertsen at that time were walking east on Madison Street?

A. Yes.

Q. And the last time you saw Maroy he was proceeding west in an automobile, in this 1956 Pontiac on Madison—I am sorry. He was proceeding east, is that correct?

A. Yes.

Q. And the last time you saw Minor, Minor was proceeding east in the 1956 Pontiac on Madison Street, is that correct?

A. Yes.

Q. And when they were proceeding east on Madison Street in this automobile, they were to the east of you, is that correct?

A. No, we were going one way, and they were going another.

Q. Yes. Did you at any time after you saw Maroy proceeding east in the car on Madison Street that

202 day, see Jessie Maroy again?

A. No.

Q. You went to the B & B Tavern, is that correct, sir?

A. On Madison and Hoyne. I guess that is the name of it, or Madison and Leavitt. I guess that is the name of it.

Q. And where is it located at Madison and Leavitt, what corner, sir?

A. The northeast corner.

Q. And Agent Gjertsen was with you at that time, was he not?

A. Yes.

Q. Did you later see Edward Minor?

A. Yes.

The Court: Is the answer yes?

The Witness: Yes.

By Mr. Pincham:

Q. Was he in the tavern when you later saw him?

A. Yes.

Q. About how long was it from the time you saw him, that is, Minor, proceeding east in the automobile, was it before you again saw him in the tavern on the northeast corner of Leavitt and Madison?

A. That is where I saw him the next time, on Leavitt and Madison.

203 Q. How long was it from the time you last saw him in the car proceeding east on Madison was it before you saw him in the tavern?

A. I guess about 25 minutes or 30 minutes. We drank a bottle of beer and I guess it took that long.

Q. And when he came into the tavern, that is, when Minor came into the tavern, was he alone or was he with someone?

A. He was alone.

Q. When he entered the tavern, you were sitting at the table with Gjertsen, is that correct?

A. Yes.

Q. And he entered, did he not, sir, from the Leavitt Street side of the tavern?

A. Yes.

Q. When he entered the tavern, before you got up from the table, did he say anything to you?

A. No, he only nodded his head.

Q. And before you got up from the table, did you say anything to Minor?

A. I said, "Yes, there he is. Everything is all right."

Q. That is what you said to Minor?

A. No, I am sorry. I said this to Gjertsen.

Q. No, I am asking you, did you say anything to Minor before you got up from the table?

204 A. No.

Q. Did Gjertsen say anything to Minor before he got up from the table?

A. No.

Q. Did Minor say anything to Gjertsen before he got up from the table?

A. No.

Q. Did Minor say anything to you before Gjertsen gave you the money?

A. No.

Q. Did either you or Gjertsen say anything to Minor before Gjertsen gave you the money?

A. No.

Q. Where was Minor at the time Gjertsen gave you the money?

A. Standing at the bar.

Q. Was anyone standing next to him?

A. Somebody. I don't know who it was.

Q. Did you observe whether or not Minor engaged in conversation with anyone when he entered the tavern before he said something to you?

A. I don't think so. He didn't talk to anybody, I don't think.

Q. After Gjertsen gave you the money, you then went over to where Minor was standing, is that correct, sir?

205 A. Yes.

Q. When you went over to where Minor was standing, did Gjertsen leave the table?

A. No, he stayed there.

Q. While Gjertsen was sitting at the table and while you and Minor were standing at the bar, that is when you gave Minor the money?

A. Yes.

Q. When you gave Minor the money, standing there at the bar, did you then see the defendant Jessie Maroy?

A. No.

Q. And when you gave Minor the money, Minor handed you a package?

A. Yes, sir.

Q. Is that right?

A. Yes.

Q. When Minor handed you the package, did you at that time see Jessie Maroy?

A. No.

Q. Did you observe Minor leave the tavern?

A. No.

Q. I beg your pardon.

A. We left first.

Q. You and Agent Gjertsen left out of the tavern before the defendant left out of the tavern, is that right, sir?

206 A. Yes.

Q. How long did you remain in the tavern after Minor had handed you the package?

A. Well, I just finished that beer. I went over to the table and drank the rest of the beer down and gave Johnny the package, and we left.

Q. Would you say that was approximately three or four minutes?

A. Maybe not that long.

Q. Now when you left out of the tavern, did you observe whether Minor was at the time talking to anybody?

A. No, I didn't observe.

Q. And the last time you saw Minor, he was standing at the bar, at the point where he passed you that package?

A. Yes.

Q. Did you leave out of the side door on Leavitt Street, or out of the front door on Madison Street?

A. Vaguely—I cannot recollect. I think we left out of the front door.

Q. You think you left out of the front?

A. Yes, sir.

Q. Now, when you left did you go to an automobile?

A. Yes, we walked back and got in Johnny's car.

Q. Where was Johnny's car parked?

207 A. On Hoyne, I told you.

Q. During the time that you walked from the tavern on the northeast corner of Leavitt and Madison, up to the time you arrived at the car on Hoyne and Madison, did you see the defendant Maroy.

A. No.

Q. During the time you were walking from the tavern to the automobile, did you see the defendant Edward Minor?

A. No.

Q. Did Gjertsen walk with you continuously and uninterruptedly from the time you left he tavern up to the time you arrived at the automobile at Madison and Hoyne?

A. Yes.

Q. Did Gjertsen get into the car at Madison and Hoyne?

A. Yes.

Q. Did you get into the car at Madison and Hoyne?

A. Yes.

Q. Now, I take it at that time, you came back downtown?

A. Yes.

Q. Did you come back to the office?

A. Yes.

Q. With Gjertsen?

A. Yes.

Q. I didn't hear you.

A. Yes.

208 Q. How long did you remain at the office?

A. I wasn't there too long.

Q. When you left the office, did you leave alone, or did you leave with someone?

A. I left alone.

Q. Now, you didn't see Turnbou on the 22nd day of May, 1956, did you, sir?

A. Yes, sir.

Q. Where was Turnbou when you first saw him on that day?

A. In the office.

Q. And the office that you have reference to, sir, is the office of the Narcotics Bureau over in the New Post Office Building?

A. That is right.

Q. About what time was it you saw Turnbou?

A. Some time in the afternoon, I guess about—I don't know exactly. I think it was around 1:00 or 2:00, something like that. I don't know.

Q. Did you go to this office alone or did you go with someone?

A. I went alone.

Q. Now, on this date, May 22nd, 1956, was this the first time you had seen Turnbou to know him?

A. Yes.

Q. When you saw Turnbou in this office, was there
209 anyone else present besides yourself and Turnbou?

A. Yes, sir.

Q. Who else was present?

A. Spillane and Gjertsen.

Q. Was there a conversation between the persons who were present?

A. Yes.

Q. After this conversation, did you go some place?

A. Yes.

Q. Did you go with someone or did you go alone?

A. Turnbou and I went together.

Q. Did you use an automobile to go?

A. Yes.

Q. Were you searched on this occasion?

A. No.

Q. Now, approximately what time was it when you and Turnbou left the office building?

A. I guess maybe about 3:00 o'clock.

Q. And when you left the office building with Turnbou did you see Gjertsen and Spillane in the office?

A. You mean before I left?

Q. Yes.

A. Yes.

Q. Was Spillane and Gjertsen in the office when you left?

210 A. Yes, Turnbou and I left together first.

Q. And you went, I believe you stated, to the vicinity of Madison and Hoyne?

A. That is right.

Q. And I take it that Turnbou drove the automobile?

A. That is right.

Q. Did he park the automobile when you arrived, when you and Turnbou arrived in the vicinity of Madison and Hoyne?

A. Yes.

Q. Where was the car parked?

A. Down near the alley on Hoyne.

Q. Between what two streets?

A. Between Warren and Madison.

Q. On the east or west side of Hoyne?

A. On the east side of Hoyne.

Q. Facing in which direction?

A. Facing north.

Q. Did you get out of the car?

A. Yes, sir.

Q. And when you got out of the car, where did you go?

A. We stood there by the car at that particular time.

Q. How long did you stand there by the car before you left?

211 A. Until I told him to wait across the street.

Q. How long was that in minutes, approximately?

A. Couple of minutes at the most.

Q. I believe you told the Court and jury that while you were standing there, you saw the defendant Jessie Maroy and the defendant Edward Minor?

A. Yes.

Q. Now, where was Edward Minor when you first saw him when he was standing by the car?

A. Standing at the corner.

Q. What corner?

A. Hoyne and Madison.

Q. Which corner of Hoyne and Madison?

A. The northwest corner, standing there by the car.

Q. He was across the street from you, was he not, sir?

A. Yes, sir, diagonally this time.

Q. And where was Jessie Maroy when you saw him while he was standing there by the car?

A. Standing there with him.

Q. Was there anyone else standing there besides Minor and Maroy?

A. There was a girl, but I didn't know her.

Q. Was there anyone else standing there?

A. No.

212 Q. Did you see them standing at the northwest corner of Hoyne and Madison when you first approached that point where you parked the automobile?

A. Yes.

Q. Was Maroy standing on the northwest corner of Madison and Hoyne when you got out of the car?

A. Yes.

Q. Was Minor standing on the northwest corner of Hoyne and Madison when you got out of the car?

A. Yes.

Q. Now, this girl was there also?

A. Yes.

Q. After you got out of the car, while you stood by the car for two or three minutes, you then walked over to the northwest corner of Hoyne and Madison, is that correct?

A. Yes, sir.

Q. Did Turnbou walk over with you?

A. No, I told him to wait.

Q. Just answer the question, did he walk over there with you?

A. No.

Q. When you walked over to the northwest corner of Madison and Hoyne, did you see where Turnbou was at the time when you arrived at the point where Maroy and Minor were?

213 A. I sent him into the tavern.

Q. Just answer the question. Did you see where he was?

A. I saw where he went.

Q. Where did he go?

A. He went in the tavern.

Q. Where is the tavern located?

A. Right there on the corner. The entrance is on one side, and there is an entrance on the side.

Q. What corner?

A. That corner of Hoyne and Madison, northeast corner.

Q. Northeast corner?

A. Yes.

Q. And you and Turnbou then walked south on the east side of Hoyne?

A. Turnbou and I didn't walk any place.

Q. You didn't walk together?

A. No.

Q. Did you leave the car before Turnbou or after Turnbou?

A. I got out first, because he locked the car.

Q. Just answer the question.

A. I got out of the car first.

Q. You left the car before he did, is that correct?

A. Yes, I got out first.

Q. Now, had Turnbou entered the tavern on the northeast corner of Hoyne and Madison before you arrived 214 on the northwest corner of Hoyne and Madison?

A. I didn't look back.

Q. Did you see Turnbou when he entered the tavern?

A. I didn't look back.

Q. Did you see Turnbou when he entered the tavern?

A. No.

Q. And when you arrived at the northwest corner of Hoyne and Madison, while he was standing there, I believe you told the Court and jury that Maroy said to you, "You know I don't do no business. See my man."

A. That is right.

Q. And after he said that, I believe you told the Court and jury you had no further conversation with Maroy?

A. I didn't.

Q. You did not?

A. No.

Q. But you did have a further conversation with Minor?

A. That is right.

Q. Now, did you see Maroy leave the northwest corner of Hoyne and Madison?

A. No, he didn't leave.

Q. Did you leave the northwest corner of Hoyne and Madison?

A. Yes.

Q. After you left that corner, where did you go?

215 A. I went back across the street to the tavern and got Turnbou.

Q. When you went into the tavern and got Turnbou, how long were you in the tavern before you came out?

A. Just a minute or so.

Q. And when you came out of the tavern, did you see Edward Minor?

A. Yes.

Q. Where was he at that time?

A. He was getting into the car.

Q. What car?

A. Into Jessie's car.

Q. What kind of car?

A. 1956 Pontiac.

Q. Where was the car when you saw Minor getting into the car?

A. Parked on the corner.

Q. What corner?

A. Hoyne and Madison.

Q. Was it on Hoyne or was it on Madison?

A. It was parked on Hoyne.

Q. Was it north or south of Madison Street?

A. It was north of Madison Street.

Q. Was it facing north or south?

A. It was facing south.

216 Q. Across the street from the car that you had got out of?

A. Yes.

Q. When you came out of the tavern, did you see Maroy?

A. Yes.

Q. Where was Maroy?

A. Standing on the corner.

Q. Was that girl still standing there?

A. Yes.

Q. And did you get into the car that you had originally come to the vicinity in?

A. Yes.

Q. And when you got into your car, did Turnbqu get into the car with you?

A. Yes.

Q. When you got into the automobile did you see Maroy?

A. Yes.

Q. Was he still standing on the northwest corner?

A. Yes.

Q. When you got into the car, did you see Minor?

A. Yes.

Q. Where was Minor?

A. In the c r.

Q. Did Minor move the car?

A. Yes.

217 Q. Did anyone get into the car besides Minor?

A. No.

Q. And when he got into the car, I take it he went in a southerly direction, is that correct, sir?

A. He turned to the right on Madison.

Q. He went west on Madison Street, is that correct?

A. Yes, sir.

Q. After he turned west on Madison Street, he disappeared from your view, is that correct, sir?

A. Yes, sir.

Q. And when Minor disappeared from your view heading west on Madison Street, was Maroy still standing on the corner?

A. When we left he was standing on the corner.

Q. You left with Turnbou, and did you at that time see Agent Gjertsen?

A. No.

Q. Did you at that time see Mr. Spillane?

A. No.

Q. You and Turnbou then proceeded to the vicinity of Albany Street, is that right?

A. Yes, sir.

Q. Now, is Albany an east and west bound street?

A. No.

Q. North and southbound?

A. Yes.

218 Q. Do you know what hundred west Albany is?

A. I don't know exactly.

Mr. Grady: 3100.

By Mr. Pincham:

Q. Did Turnbou park the automobile at any point in that vicinity?

A. Yes.

Q. Where was the car parked?

A. Parked in the alley.

Q. Was that an east and westbound alley?

A. Yes.

Q. Between what two streets?

A. Warren and—I don't remember exactly whether it

was between Warren and Madison or Warren and Washington, but I know that Warren was close by.

Q. Now, as and of the time Turnbou parked the car, did you then see Minor?

A. No, we waited for a little while.

Q. Did you wait sitting in the car?

A. No, we got out.

Q. When you got out of the car, in which direction did you go?

A. We walked up to the corner first.

Q. What corner?

A. Of Warren.

219 Q. Warren and what?

A. And Albany.

Q. When you arrived at Warren and Albany, did you enter any building up there?

A. No.

Q. When you arrived at Albany and Warren, did you see Minor?

A. No.

Q. Where was Minor when you next saw him?

A. Standing in the alley.

Q. Is that the east and westbound alley in which the car was parked?

A. Yes.

Q. Where were you when you saw him?

A. I was in the alley.

Q. Did you see Minor when he came into the alley?

A. You see, that alley is made on something like a "T", if I remember correctly, you know, and he could have entered from one and then come around on the little corner there, you know, and so for me to say that I saw him exactly when he entered the alley, no, I couldn't say that.

Q. And it was in this alley that you had a conversa-

tion with Minor in the presence of Turnbou, is that correct, sir?

220 A. Yes.

Q. And you left the alley with Turnbou?

A. Yes.

Q. Now, while you were in the alleyway, I will ask you this, when you last saw Jessie Maroy on this occasion, that is May 22nd, during that day was he at the northwest corner of Hoyne and Madison?

A. Yes.

Q. You didn't see him any more that day, did you, sir?

A. Yes.

Q. You saw him again the same day?

A. Yes.

Q. Now, did you see him after you left the alley with Turnbou?

A. Yes.

Q. Where was he when you saw him after you left the alley with Turnbou?

A. Standing on the same corner.

Q. And was Turnbou with you at that time?

A. Yes, sir.

Q. Was the girl standing there?

A. No.

Q. Did you engage Maroy in a conversation at that time?

A. No, I didn't say nothing to him.

Q. Were you in a car when you saw him?

221 A. Yes, sir, passing.

Q. Passing by?

A. Yes.

Q. Turnbou was with you at that time?

A. Yes, sir.

Q. Turnbou did not get out of the car?

A. No, we kept going.

Q. And I take it you came on downtown to the office building again?

A. Yes.

Mr. Pincham: That is all.

The Court: Is there any redirect examination?

Mr. Grady: May I have just a moment, your Honor?

The Court: Yes.

Redirect Examination by Mr. Grady.

Q. Mr. Cross, referring back to May 10th when you went back towards town at the end of the day with Agent Gjertsen, do you remember taking a subway that day?

Mr. Pincham: Objection.

The Court: Why?

Mr. Pincham: Because it goes beyond the scope of the cross examination.

222 Mr. Grady: No, I don't think it does.

The Court: I will overrule the objection. You may answer. Do you remember the question?

The Witness: Did I take the subway?

By Mr. Grady:

Q. Did you take the subway home that night, do you remember?

A. Yes.

Q. Do you remember how you got to the subway?

Mr. Pincham: Objection, if the court please.

The Court: I will let him answer.

The Witness: Answer?

By Mr. Grady:

Q. Yes.

A. Yes, I remember.

Q. How did you get there?

A. He drove me.

The Court: Who drove you?

The Witness: Johnny, Mr Gjertsen.

By Mr. Grady:

Q. When did he take you there?

Mr. Pincham: Objection.

The Court: I will overrule the objection. You may answer.

The Witness: When did he take me there?

223 By Mr. Grady:

Q. Was it—

Mr. Pincham: Objection.

Mr. Grady: Objection? What are you objecting to?

The Court: He has not answered the question. The question was, when did he take you there. He has not answered that question. Read the question to the witness. He has not answered your first question, Mr. Grady.

(Last question read.)

Mr. Grady: I will withdraw the question.

By Mr. Grady:

Q. You testified on cross examination that Johnny Gjertsen drove you to the Narcotics Office?

A. Yes.

Q. At the end of the day?

A. Yes.

Q. And you state now that you went to the subway?

Mr. Pincham: I am objecting to counsel rephrasing the testimony.

Mr. Grady: On cross examination, I believe counsel rephrased that testimony.

The Court: He is giving his conception of what the witness testified to just as you did on cross examina-

224 tion, Mr. Pincham.

Mr. Pincham: Yes, I am going to object—

The Court: If you think it is inaccurate, the witness may say so. Ask the question again, Mr. Grady. I think you were interrupted.

Mr. Grady: Will the reporter read back my last question.

(Last question read.)

By Mr. Grady:

Q. Is that subway in the Loop area?

A. The one I took, yes.

Q. Had you been to the narcotics office prior to the time you were taken to the subway by Mr. Gjertsen?

Mr. Pincham: I object to that if the Court please.

The Court: I will overrule the objection.

The Witness: Yes, I am almost sure I did. You see, it has been quite some time ago. I am trying to remember.

By Mr. Grady:

Q. In other words, you are not sure?

Mr. Pincham: I object to that, if the Court please.

Mr. Grady: I think that is what he said.

The Court: Is that right, you are not sure?

225 Is that it?

By The Witness:

A. No, I am not.

The Court: All right.

Mr. Grady: No further questions.

The Court: Do you wish to interrogate the witness further?

Mr. Pincham: No.

The Court: You may step down, Mr. Witness.

(Witness excused.)

The Court: Will you call your next witness, please.

WILLIAM H. TURNBOU, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grady.

Q. Will you state your name, sir?

A. William H. Turnbou.

Q. What is your occupation?

A. Treasury enforcement agent, assigned to the Federal Bureau of Narcotics in Chicago, Illinois.

Q. How long have you been a Federal Narcotics Agent?

A. Approximately three years.

226 Q. Were you a Federal Narcotics agent during the months of May, June and July 1956?

A. I was.

Q. In Chicago?

A. Yes, that is correct.

Q. Do you know the defendants in this case, Jessie Maroy and Edward Minor?

A. Yes, I do.

Q. Do you see Jessie Maroy in the courtroom?

A. Yes.

Q. Will you point him out, please.

A. He is the gentleman seated next to Mr. Pincham with a blue sweater.

Q. If you see the defendant Edward Minor, will you point him out.

A. Yes, I do. He is the gentleman that is seated beside Jessie Maroy.

Mr. Grady: If the Court please, may the record show that the witness has indicated the defendants?

The Court: Yes, the record may so indicate.

By Mr. Grady:

Q. Do you know Thomas Cross?

A. Yes, I do.

227 Q. Calling your attention to May 22 of this year, 1956, were you with Thomas Cross on that day?

A. Yes, I was.

Q. About 4:30 in the afternoon, were you with him at that time?

A. That is correct, I was.

Q. Where were you?

A. We were at the intersection of Madison and Hoyne Streets, in Chicago, Illinois.

Q. Will you state what happened abont 4:30 in the afternoon, if anything.

A. At about 4:30 p. m., Thomas Cross and I had just gotten out of the Government vehicle, and Thomas Cross pointed out—

Mr. Pincham: Objection.

The Court: You think that is not responsive to the question?

Mr. Pincham: Well, to point out, Judge. He can tell what the witness did. He cannot say he pointed out.

The Court: I don't know what the remainder of the sentence is going to be. If I point my finger at you, I am pointing you out, am I?

Mr. Pincham: You are pointing, yes, sure. But let the jury decide whether or not—

The Court: You are getting awfully technical, Mr. 228 Pincham.

Mr. Pincham: All right.

By Mr. Grady:

Q. What did he do, Mr. Turnbou.

The Court: You may tell what he did.

The Witness: Yes, your Honor.

By The Witness:

A. Thomas Cross pointed to two men that I know now as Jessie Maroy and Edward Minor.

By Mr. Grady:

Q. Where were they?

The Court: You are satisfied with the word "to" instead of "out", are you, Mr. Pincham?

Mr. Pincham: I am, your Honor.

The Court: Go ahead.

By Mr. Grady:

Q. Where were they standing, Maroy and Minor? Where were they?

A. Jessie Maroy and Edward Minor were on the west side of Hoyne, right near the corner of Madison and Hoyne intersection.

Q. What happened after Cross pointed to these two individuals?

A. Thomas Cross said—

Mr. Pincham: I object to any conversation.

229 Mr. Grady: I don't think we know, your Honor, in advance of what he says, whether or not it is conversation.

The Court: Well, counsel objects because you didn't ask for a conversation. You want to know what happened next. Is that your question?

Mr. Grady: That is right.

By Mr. Grady:

Q. What, if anything, did Thomas Cross do?

A. Thomas Cross and I had a conversation.

Q. What happened after that conversation?

A. Thomas Cross walked across from the east side of Hoyne to the west side of Hoyne and joined Jessie Maroy and Edward Minor who were in company with a colored female.

Q. Did you observe anything further of what happened on the other side of the street?

A. I saw there was a conversation between Thomas Cross and Jessie Maroy and Edward Minor.

Q. Where were you during the time that this conversation took place?

A. I was on the east side of Hoyne street near the alleyway between Madison and the next street north of Madison.

Q. About how long was Cross engaged in a conversation with the defendant?

A. A fairly short period of time, several minutes,
230 about three, I guess, three or four minutes.

Q. Did you observe what happened after that?

A. Yes.

Q. What did happen?

A. Thomas Cross came to me and we had a conversation.

Q. What happend after that conversation?

A. Thomas Cross returned across the street and rejoined Jessie Maroy and Edward Minor.

Q. About how long did he stay over there with them this time?

A. Well, I couldn't say because I then went into a tavern located on the corner of Madison and Hoyne, the northeast corner.

Q. When did you next see Thomas Cross?

A. About five minutes later.

Q. Where was he when you saw him?

A. Inside of the tavern that I entered previously.

Q. Did you have another conversation with Thomas Cross at that time?

A. Yes, I did.

Q. What did you do after that?

A. Immediately after the conversation with Thomas Cross, he and I, under Cross' direction, proceeded to the vicinity of Washingtion Boulevard and Albany Avenue.

Q. Were you in an automobile at that time?

231 A. Yes, we were in a Government automobile operated by myself.

Q. What happened after you arrived at that intersection?

A. I circled the area looking for Edward Minor. I then drove to the middle of Warren Boulevard between Albany Avenue and Sacramento and parked the Government automobile on the south side of Warren Boulevard

—I think it was the north side. I would like to correct that.

Q. What did you do after you parked the automobile?

A. Thomas Cross and I got out of the automobile and then proceeded to the west end of an alley bounded on the north by Washington, on the south by Warren Boulevard, on the west by Albany and on the east by Sacramento.

Q. Did you notice any other automobile parked around that area?

A. Yes, I did.

Q. What automobile did you notice?

A. I noticed a 1956 two-toned Pontiac bearing 1956 Illinois registration 2713054, parked on the same side of the street that I parked the Government vehicle.

Q. Had you seen that automobile earlier that day?

A. I had seen this automobile at Madison and Hoyne.

Q. Did you note the license number at that time?

A. Yes, I did.

Q. It was the same license number you saw the 232 second time?

A. It was the same license number.

Q. What happened after you went into the alley there with Thomas Cross?

A. We were there approximately ten minutes, and at that time I observed Edward Minor walking through the alley off of Sacramento headed west.

Q. What did you observe him do after that?

A. Edward Minor continued walking towards me and Thomas Cross. At that time I began walking towards Edward Minor.

Q. Then what happened?

A. We met at about midway of the alley.

Q. Did you have a conversation with Edward Minor at that time?

A. Yes, I did.

Q. Was Thomas Cross present at that time?

A. Yes, he was.

Q. Will you state what you said to Minor and what he said to you, and what Cross said.

Mr. Pincham: To which conversation I am objecting, your Honor, as to the defendant Maroy.

The Court: I take it that you at this time offer it only as to the defendant Minor?

Mr. Grady: As at this time, I will offer it as to the defendant Minor.

233 The Court: The jury will consider the next answer of the witness only as to the defendant Minor. Go ahead and answer, Mr. Witness.

By The Witness:

A. Thomas Cross introduced me to Edward Minor as his man. And Edward Minor told me that his name was Sammy. At that time he produced a package contained in a sheet of paper from a telephone directory and handed it to me.

By Mr. Grady:

Q. Mr. Turnbou, I show you Government's Exhibit No. 7 for identification and ask you if you have ever seen that before?

A. Yes, I have.

Q. Will you state what it is?

A. Government's Exhibit No. 7 is the piece of telephone directory sheet which Edward Minor handed to me while we were situated in the alley which I previously described on May 22nd, 1956, at about 5:10 p. m., and this Government's Exhibit No. 7 did contain a quantity of suspected heroin.

Q. I show you Government's Exhibit No. 8 for identification and ask you if you have ever seen that before?

A. No, I have not seen it.

Q. Your initials are not on that?

A. No.

234 Q. At the time how much money did you say you gave the defendant Minor?

A. I did not.

Q. Did you give any money to Edward Minor at this time?

A. Yes, I did.

Q. How much did you give him?

A. I gave Edward Minor $100 Government official advance funds.

Q. That was for the purpose of purchasing the heroin contained in Government's Exhibit 7?

A. That is correct.

Q. And at the time you made that purchase from Edward Minor, did you give him an order form prescribed by the Secretary of the Treasury?

A. No, sir, I did not.

Q. At the time you received Government's Exhibit No. 7 for identification containing heroin, were there any Federal tax stamps anywhere on Government's Exhibit No. 7?

A. There were no Federal tax stamps or any other type of stamp on Government's Exhibit 7.

Q. Is it in the same condition as it was when you received it? Is that correct?

A. That is correct.

Q. Except that it does not contain a powder?

A. Yes, sir.

235 Q. Was there any further conversation in the alley by any person?

A. Yes, there was a further conversation.

Q. Will you state what was said by you, what was said by the defendant Minor if anything.

Mr. Pincham: I object.

The Court: Same instruction, ladies and gentlemen. You are to consider this answer of the witness only as to Defendant Minor, and not as to the defendant Maroy. You may go ahead.

By The Witness:

A. I asked Mr. Minor if I could contact him in about three days to make another purchase of heroin and he said certainly, it would be all right, that I know where to find him. He would be in the same locality.

By Mr. Grady:

Q. What happened after that?

A. Shortly after that Mr. Minor proceeded to walk towards the Sacramento entrance to the alley. Thomas Cross and I then walked west to the Albany entrance of the alley and proceeded south to Warren Boulevard where we entered the Government vehicle, which I, in turn, operated to the Post Office Building, the office of the Federal Bureau of Narcotics.

Q. What route did you take to the Bureau of Narcotics?

236 A. I took a circuitous route.

Q. Did you pass the corner of Hoyne and Madison again?

A. I don't think that I did. I am almost certain that I did not.

Q. Mr. Turnbou, calling your attention to July 5, 1956, ddi you have any contact with the defendant Edward Minor on that day?

A. Yes, I did.

Q. Will you state how you first established contact with the defendant on that day?

A. On July 5, 1956, I placed a telephone call to the Charles Hotel.

Q. Whom did you ask for?

A. I asked to speak to Loose Tooth.

Q. What happened then?

A. A person came to the telephone whose voice I recognized to be that of Edward Minor.

Mr. Pincham: I am going to object to the answer, if the Court please, and move that it be stricken. I am objecting to the latter part of the answer.

The Court: Yes, I think that is a valid objection. You haven't laid the foundation for it. I sustain the objection and strike the latter part of the answer.

237 By Mr. Grady:

Q. Did you recognize the voice on the other end of the wire?

Mr. Pincham: I object to that again, if the Court please.

The Court: Well, had you ever talked with Minor?

The Witness: Yes.

The Court: Had you ever talked with him before that time?

The Witness: Yes.

The Court: Had you ever talked with him before that time?

Mr. Grady: I believe the witness has just testified that he had on May 22nd. I asked him whether he recognized his voice.

The Court: I am trying to satisfy Mr. Pincham's objection.

Mr. Grady: Do you want me to ask him whether he ever heard him talk?

The Court: Yes, you may ask him again.

By Mr. Grady:

Q. Referring to the testimony you have just given here, Mr. Turnbou, did you talk to Edward Minor on the 22nd of May 1956?

238 A. Yes, I did.

Q. Now, you say you recognized the voice on the other end of the telephone on July 5th?

Mr. Pincham: I object to that question, if the Court please.

The Court: Why? He said he had talked with him previously.

Mr. Pincham: Yes, but that is not the foundation that the law requires to be made, Judge, to get a telephone conversation into evidence.

The Court: I think you are right.

Mr. Pincham: Thank you, your Honor.

Mr. Grady: The objection is sustained?

The Court: Yes. You must establish it by laying the proper foundation, that the witness was familiar with the voice of the defendant.

Mr. Grady: Well, I don't think it is necessary to show that the witness had talked to the defendant on the telephone before.

The Court: Some authorities say it is. We will resolve the authorities in this instance against the Government. I will sustain the objection.

Mr. Grady: Am I to understand, your Honor, that the first telephone conversation between two parties 239 is never admitted into evidence.

The Court: He had talked with him before this time, had he not?

Mr. Grady: He had.

The Court: You had talked with him before on the telephone?

Mr. Grady: Not on the telephone, no.

The Witness: No, your Honor.

The Court: I will have to sustain the objection.

Mr. Grady: I won't press it if the Court feels it is not admissible. It seems strange—

The Court: It does seem strange. The books say it. I have always thought it was strange, but I think that is the law.

By Mr. Grady:

Q. Did the party on the other end of the phone identify himself at any time?

Mr. Pincham: Objection if the court please.

The Court: I will sustain the objection.

By Mr. Grady:

Q. Well, exclusive of the telephone conversation, what did you do on July 5th?

The Court: He said he had a telephone conversa-
240 tion. You may ask him what he did after that.

By Mr. Grady:

Q. What did you do after the telephone conversation?

A. I went to the vicinity of Madison and Hoyne, arriving approximately at 10:00 p. m. on July 5th, 1956.

Q. What did you have on your person on that day at that time?

A. I had $500 Government official advance funds.

Q. Do you customarily carry that much money?

Mr. Pincham: I object to that, if the Court please, what he customarily does.

The Court: Yes, I will sustain the objection. What difference does it make whether he customarily carried it.

By Mr. Grady:

Q. What did you do after you arrived at that vicinity?

A. I stood at the intersection of Madison and Hoyne on the southeast corner for several minutes.

Q. What happened after that?

A. Shortly after that Edward Minor walked up to me and greeted me.

Q. What conversation was there between you at that time, if any?

Mr. Pincham: I object to this conversation as to the defendant Maroy.

241 The Court: Yes. You are still offering this only as to the defendant Minor?

Mr. Grady: I think at this time perhaps I would like to argue that question.

The Court: All right. Do you want to interrupt the direct examination of this witness to argue it, out of the presence of the jury?

Mr. Grady: I would, yes, your Honor.

The Court: I will excuse you a few minutes, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Mr. Agent, suppose you step out for a while.

(The following proceedings were had out of the presence and hearing of the witness.)

Mr. Grady: I think, your Honor, at this point, and perhaps some time ago, according to this testimony, the Government has established a prima facie case of conspiracy between these two defendants, a conspiracy to possess, purchase and unlawfully sell heroin.

The Court: Will you review the highlights of the evidence you think supports that view, so that Mr. Pincham can answer.

242 Mr. Grady: Yes.

The Court: Effectively, if he can reply effectively.

Mr. Grady: Yes, I will.

On the 10th day of May, Mr. Gjertsen testified that he had a conversation with both of these defendants, and in particular a conversation with the defendant Jessie Maroy said that he would not do business himself, but that if Gjertsen wanted to do business with him, he would have to deal with his man, indicating the defendant Minor.

Then Gjertsen also overheard the defendant Maroy say the same thing to the witness Thomas Cross who has just testified here, so that we have actually two statements

to that effect on the 10th day of May, 1956, two admissions by Maroy that Minor was his man, and if he wanted to purchase narcotics from Maroy he would have to deal with Minor, his man.

On the 22nd day of May of this year the witness Cross has testified that he had a similar conversation with the defendant Maroy and again the defendant Minor was present. The witness Cross testified that he asked the defendant Maroy to do business with his man. Again the defendant Maroy said, "I don't do business on the street," or "I don't do business with grays. You will have to do business with my man," again indicating the defend-
243 ant Minor.

On each of these occasions the agent proceeded to do exactly that, namely, to do business with the defendant Minor. We have the defendants together on a number of occasions. The witness Gjertsen testified after the transaction that the witness Turnbou is in the course of describing here, the defendant Maroy delivered actually the defendant Minor to the spot; that Maroy drove the automobile out of which the defendant Minor got at Hoyne and Madison and went over and commenced to transact the heroin transaction with the witness Turnbou.

I think in all candor, your Honor, that if by this time the Government has not established a prima facie case of conspiracy that I will have to admit that probably we won't because our other evidence—while there will be additional evidence of conspiracy, it will be cumulative and of the same variety that we have produced thus far. As far as overt acts go, I think that speaks for itself.

The Court: Mr. Pincham, will you tell me why you think the Government has not made out a prima facie case under Count 12 of this indictment.

Mr. Pincham: Because, if the Court please, at this state of the case, the testimony of the Government must be taken as true so far, and the question is—

The Court: It must be construed most favorably to
244 the Government.

Mr. Pincham: Yes. I would like, if I may, Judge, to attempt to correct, or at least give my impression of the testimony which is a little different from what Mr. Grady said. I do not intend to infer that Mr. Grady has intentionally misrepresented what the testimony was.

The Court: I heard it. I have a careful note here of the highlights.

Mr. Pincham. I am sure you have.

The Court: I really am afraid, Mr. Pincham, if the jury believes the testimony of the Government witnesses, a prima facie case has been made out.

Mr. Pincham: I will submit—

The Court: You know you don't have to prove—they don't have to prove that either one of these men actually possessed or made a sale. It is the illegal conduct that makes the confederation, designed to accomplish—

Mr. Pincham: Your Honor, I would like to call your Honor's attention to the case of United States versus Morei, in which a similar charge was based, and I would like to call your Honor's attention to the case of United States versus Moses, and in the Moses case, you have the same situation involving narcotics where an agent went to an informer and asked the informer, "Can you get me some narcotics?" The informer told him, I think I
245 can." And the informer and the agent went to the defendant, and the informer introduced the agent to the defendant, and the defendant did in fact sell to the agent in the presence of the informer.

The informer at the time did not know, that is, Moses did not know at that time that the agent in fact was an agent. He thought that this particular individual was a person who desired narcotics for his own consumption, and at that time the Court held that that was insufficient.

The mere fact that Moses had knowledge of the transaction; the mere fact that Maroy had knowledge, if such is the case, that Minor was in fact engaged in an illicit enterprise does not make him guilty of conspiracy, and it is insufficient to prove conspiracy. The mere fact that Minor or Maroy said to Gjertsen and to Cross, and as a matter of fact the statement was on the 22nd, you know I am not dealing—I don't deal, see my man Maroy.

Now the Government would have your Honor believe that the term "My man" denotes that of an employee, when the evidence does not show that. The evidence is far inadequate to show that. It is the same as one lawyer saying to another lawyer, "I don't try murder cases. See my partner."

Does that make the lawyer a party to the trial of the case? See So-and-so, does that make—

246 The Court: A conspiracy may be shown by inference, Mr. Pincham. Conspiracies are always shown by inferences. I never sat in a conspiracy case where the proof was not circumstantial and by inference. These men do not have talking pictures made of what they do. They don't have a record made, a disc. Here are two boys that go out together and they each talk like they are in the business. I think that is enough to submit to the jury. The jury may not believe the witnesses and the jury may not think that guilt has been proven beyond a reasonable doubt but there is enough here to tie in your other boy.

Mr. Pincham: Judge, may I say this, Your Honor?

The Court: You know they start out in a comparatively innocuous way, that is, innocuous as far as one is concerned. Once the money is handed over and the package of stuff, as your client calls it, or people engaged in this traffic call it, once that is handed over, it all dates back to the original arrangement. The law is, after all, common sense.

Mr. Pincham: Judge, may I—

The Court: Some people don't think so.

Mr. Pincham: May I say this, your Honor. I would like to make this observation to the Court, if I may. I had a recent occasion to make an extensive search on conspiracy and I might point this out to the Court
247 and Mr. Grady, and I would hazard a guess that I have read at least, in the last six months, a thousand criminal conspiracy cases, and in not a single conspiracy case that went to the Court of Appeals did the Government attempt to obtain a conviction without the testimony of one of the alleged co-conspirators. I cannot give your Honor the name of the case but as a matter of fact, the Court in one opinion pointed out that it is almost impossible to prove a conspiracy without the Government having the cooperation of one of the co-conspirators.

Mr. Grady: I am sure that is what the assumption was.

The Court: I would cite you a case I tried here, Mr. Pincham, the vote fraud case, where there were about nine defendants and ten lawyers, tried for conspiracy, and the only charge was conspiracy and not one of them took the stand, not one of them informed, and the Court of Appeals has just affirmed the judgment of conviction.

Mr. Pincham: Yes, Judge.

The Court: So you haven't had the experience that I have.

Mr. Pincham: In that type of case you have more—let me go one further.

The Court: It is a much more difficult case to prove
248 than this. I think this is easy from the viewpoint of the prosecution. Judge Learned Hand has called a conspiracy case the darling of the prosecutor. Isn't that what he called it?

Mr. Pincham: That is right. May I cite to your Honor the case of Peona versus United States which is an opinion written by Mr. Justice Learned Hand.

The Court: He doesn't like them. I don't like what the law permits us to do in conspiracy cases, but I am obligated to follow the law.

Mr. Pincham: Judge, before you decide, let me cite to Your Honor United States versus Bay, 41 Fed. 2d 852.

And in the Bay case there were three defendants charged with conspiracy. One of the defendants was engaged in the wholesale sale of liquor. The second defendant operated a launch from one side of the river to the other side of the river, and the third defendant sold untaxed alcohol on a retail market. The facts of the case as presented by the Government were the wholesaler could gave the liquor to the launch operator. The launch operator was being paid by the number of gallons he transported across the river, and the retailer paid the launch operator for the transportation of the liquor and took the whiskey off the boat. The three of them were charged with a conspiracy to violate the National
249 Prohibition Act, and in reversing the judgment, both facts were undisputed and not denied. We have three persons here unquestionably doing this particular thing, and the Court of Appeals in response to the contentions raised by the defendant said,

> "The knowledge by one that another is doing or contemplates the doing of such act without any aid or assistance by such a one in the doing of the act does not—"

The Court: Stop right there. There was aid here.

Mr. Pincham: What is the aid, Judge?

The Court: There was some remarks by your other client about doing business.

Mr. Pincham: Where is the aid? It is not aid, Judge. If he merely says, "Don't do business with me."

The Court: I don't agree with you, because the inference is there that he will do business and is doing business in certain circumstances.

Mr. Pincham: Well, Judge—

The Court: We cannot have a conspiracy drawn up with a gold seal and blue ribbon on it.

Mr. Pincham: But this Court—

The Court: —in numbered paragraphs.

Mr. Pincham: Judge, may I finish?

The Court: We have to take the facts and draw
250 inferences from them, if there are some facts to draw inferences from, and I think there are.

Mr. Pincham: In doing that, Judge, the Government is still bound to prove a conspiracy because this case is like any other case.

The Court: Yes. I don't know how many—I would not be as reckless to say I have read thousands of cases, but I have had a lot of good lawyers like yourself make the same kind of argument you have made and cite me so many of these conspiracy cases and here and there you can take a paragraph out of context—

Mr. Pincham: I am not doing that.

The Court: —even opinions of the Supreme Court and they seemingly favor a defendant so situated as your client, Maroy here. But I am satisfied that there is enough here for me to say to this jury that a prima facie case has been made out. I won't say that to them in those words. I will say I will permit them to consider the evidence as to both defendants, and it will be up to them to determine whether or not they have been proven guilty beyond a reasonable doubt. I think if they believe the evidence, or believe the witnesses for the Government that they would be warranted in so finding.

Mr. Pincham: Judge, all you have here is at best, "I won't do business with the grays," or words to that
251 effect, "See my man Minor."

The Court: That, and the fact that there was money turned over.

Mr. Pincham: To whom?

The Court: And packages received.

Mr. Pincham: To whom?

The Court: To one of the co-conspirators.

Mr. Pincham: What we are trying now, the issue before the Court is whether or not the evidence establishes a conspiracy as to Maroy. Of course, if you don't have it as to Maroy, you don't have it as to Minor. To show a conspiracy, the acts and declarations done by Minor, the law is that you cannot rely on those acts and declarations to convict the defendant Maroy of that conspiracy, and that is the law.

The Court: I don't—

Mr. Pincham: So the only thing you have—you cannot rely on the passing of the money or the passing of the packages and what have you, to show Maroy's participation in a conspiracy. All you have as to the defendant Maroy is the repeated statement, "I am not doing business," or "Do business with my man."

That is all you have in this record as to any conspiracy as to the defendant Maroy. And Judge, going one further, when your Honor says—one thing, Judge, I
252 don't do when I cite a case, I think the Court—I can assure your Honor you can rely on this case stating what I interpret the law to be as decided by this jury.

Mr. Grady: What about that case about the drug you cited a little while ago. Did that bear out your contention you were making before Judge Hoffman?

Mr. Pincham: In the case of United States versus Bay the Court specifically stated that the fact that one defendant has knowledge that another defendant is violating the law—

The Court: This goes further.

Mr. Pincham: That is all you have, Judge.

The Court: With the greatest respect for you, I don't

agree with you. If your client was affluent enough to authorize the purchase of a transcript of this testimony I think if you read it carefully you would see that you are mistaken in your view.

Mr. Pincham: Judge, so that I can be informed, I am asking Mr. Grady to enlighten me as to what evidence other than the reputed statements of Gjertsen that Maroy made and the reputed statements of Maroy testified to by Cross, is there anything else in this record to show any participation or the commission of a conspiracy offense by the defendant Maroy.

Mr. Grady: Of course, my opinion is not the im-
253 portant thing here. I would be happy to say this.

I think one of the most cogent pieces of evidence that the Government has introduced here is the fact—and I am referring here to the conduct of Maroy, not the conduct of Minor, on the 22nd of May. Thomas Cross, according to his testimony, which we take as true for this purpose, walked over to the defendant Maroy and said, "I would like to do some business with you."

Maroy, standing right there, said, "No, I don't do business—do business with my man." Then he stood there and listened, stood there about as far as I am from you, Mr. Pincham, and heard the exact location, the exact price and the exact details of the transaction, worked out in his presence.

Mr. Pincham: Cross didn't testify to that. Cross did not at any time say anything about price except in the restaurant or in the tavern, where he said the price was $60.

Mr. Grady: Perhaps I am wrong there.

Mr. Pincham: You don't know what Cross knew. You didn't ask Cross and I didn't either.

Mr. Grady: Minor said to Cross at that time, "Meet me at the intersection of Albany and Washington."

All this was said right in Maroy's presence. Now, I am relying there on the conduct of Maroy. He is
254 standing there after telling this man to deal with his man, he is standing there and watching the deal.

The Court: I think, Mr. Pincham, your objections really go to the weight of the evidence. Now, you can argue—the kind of argument you are making to me could very well be an effective argument to the jury in your summation, but we use, remember, the word prima facie in this connection. I have seen stronger conspiracy cases and I have seen weaker ones, but there is enough here to submit it to the jury. I am not saying what I would do if I were trying this case without a jury. I don't know, but I think I am compelled now to rule that the evidence which has been adduced thus far, and which will be submitted later, if any is, in respect to the conversation about these alleged acts will be received as against—I don't use the word "against", I try not to in the trial of this case, in respect to or as regards both defendants, and after this brief recess, that is what I shall tell the jury.

I promise you that I shall not even use the word prima facie evidence. I think I am authorized to but I have always thought that that is somewhat prejudicial because it creates an impression in the minds of the jurors that maybe I am telling them that these defendants are guilty.

I am not. They are the ones who must determine
255 what the facts are.

We will take a brief recess.

(Recess taken.)

The Court: Ladies and gentlemen of the jury, up to now, I have been indicating to you that certain conversations testified to and other evidence should be considered by you only in respect to the case involving the Edward Minor, and not Jessie Maroy.

I now instruct you that you may consider that evidence already given and to be given in respect to Count 12 of the indictment—everything I am saying here refers to Count 12 of the indictment which is the so-called alleged conspiracy count, as to both defendants. Is that adequate, gentlemen?

Mr. Pincham: Yes, your Honor, I suppose it is. I would like the record to show that an objection is being made as to the defendant Maroy.

The Court: Yes, and I overrule the objection.

Mr. Pincham: Very well.

The Court: You may continue.

Mr. Grady: What was the last question?

(Last question read.)

The Witness: I told Mr. Minor that I was ready to obtain the ounce of pure heroin. He then commented to me that he was curious as to why so many strange 256 automobiles were in the area whenever I met him.

By Mr. Grady:

Q. What did you say, if anything, after that?

A. I said I didn't know anything about automobiles.

Q. Was there any further conversation at this time between you?

A. Yes.

Q. What was said?

A. Edward Minor told me to go to—I think it was Morris' restaurant. That is an establishment located in a basement near the intersection of Hoyne and Washington Boulevard and to wait there for him.

Q. Did you do that?

A. Yes, I did.

Q. Did you go there alone or in company with somebody else?

A. I went there alone.

Q. About what time was it that you got there, do you recall?

A. Well, it was shortly after ten, about five after, I suppose.

Q. How long did you wait there?

A. I was there until about 11:15 p. m.

Q. Did anything happen at 11:15 p. m.?

A. Yes.

257 A. Yes.

Q. What did happen?

A. I left Morris' restaurant and crossed over to the west side of Hoyne and entered my Government vehicle, and shortly thereafter, a couple of minutes, Edward Minor drove up in a 1941, rather an old Plymouth, I don't recall the year, green in color, and beckoned to me.

Q. What did you do after he beckoned?

A. I got out of the Government vehicle and joined Mr. Minor in his automobile.

Q. What sort of automobile was he driving?

A. A green Plymouth.

Q. Oh, yes, that is right. What did you do then?

A. Mr. Minor operated this Plymouth automobile on Madison to the 2900 block of Madison where he parked it. He and I got out of the automobile and then we walked to the Birdland Liquor Tavern.

Q. Where is that located?

A. It is about midway of the block between 2900 and 3000 west. I don't recall the exact address.

Q. What happened after that?

A. We entered the tavern and had some refreshments.

Q. Was there anyone else there with you at that time?

A. Yes, there were other people there in the basement.

Q. What happened after you had finished your beer?

258 A. While were were having the refreshments, Mr.

Minor conversed with an unknown female, colored female, whom I had never seen before.

Q. What happened after that conversation?

A. Shortly after that, the three of us, Edward Minor—

Q. Did you overhear that conversation?

A. No, I didn't. The three of us, the colored female, Mr. Minor and myself left the Birdland Tavern and reentered the Plymouth automobile which was operated by Mr. Minor.

Q. Did you drive some place in the automobile?

A. Mr. Minor drove the automobile by a circuitous route mostly Lake Street to approximately 1710 West Maple.

Q. What is that address?

A. That is the location of the Spot Tavern.

Q. Did you go inside of that tavern?

A. Yes, the three of us left the Plymouth automobile and entered the Spot Tavern.

Q. Was there any conversation between you after you got inside the tavern?

A. Yes, there was.

Q. Will you state what was said and by whom?

Mr. Pincham: If the Court please, may my objection run through this testimony so that I do not have to continue to object?

259 The Court: Oh, yes, I will so rule. I don't ordinarily favor objections in advance, but I take it your objections are so far as your client Maroy is concerned?

Mr. Pincham: Yes.

The Court: I will overrule the objection.

By Mr. Grady:

Q. What was that conversation, Mr. Turnbou?

A. Edward Minor asked me if I was ready to deal. I said, "Yes, I have the money."

Edward Minor then said, "Wait here, I will be back."

Q. What happened after that?

A. Edward Minor and the girl left the tavern.

Q. And you waited in the tavern?

A. I remained in the tavern.

Q. How long did you wait there?

A. About five or ten minutes at the most.

Q. Did they come back after that?

A. Yes, they came back.

Q. What happened after they came back?

A. When they returned, Edward Minor asked me for the money.

Q. What did you do then?

A. I took $500 Government official advance funds 260 from my pocket, and counted it, and then handed it to Edward Minor.

Q. What if anything did you do after that?

A. Edward Minor counted the money and put it in his pocket and then told the colored girl to give me the package and further told me to remain in the tavern, that he had obtained a cab for me. He also told the girl to wait with me until the cab arrived.

Edward Minor then left the tavern at that time. It was after midnight.

Q. Did the girl give you the package?

A. Yes, she then handed me a small manilla coin envelope sealed with scotch tape.

Q. I show you Government's Exhibit No. 11 for identification, Mr. Turnbou, and ask you whether you recognize that.

A. Yes, I do.

Q. Will you state what it is, please.

A. That is the envelope, the manilla envelope, which the colored girl gave to me at the Spot Tavern on July 6, 1956, at about 12:15 a. m.

Q. Do your initials appear on that envelope?

A. Yes, they do.

Q. Does the date also appear in your handwriting?

A. Yes.

261 Q. And at the time of this transaction, Mr. Turnbou, did you give either Edward Minor or this colored girl a purchase order form for the purchase of narcotics, as prescribed by the Secretary of the Treasury of the United States?

A. No, I did not.

Q. And this package, when you received it from the girl, did it have upon it or were there around it any stamps of any kind, Federal tax stamps?

A. There were no stamps of any kind.

Q. Is it in the same condition now as it was when you received it except for the fact that it is open and your initials are upon it?

A. Yes.

Q. What did you do with this package after you received it from the girl? Did you give it to anyone else?

A. I did later on. I immediately placed the package in my pocket at that time.

Q. I see. Then what did you do after Edward Minor had left the tavern and you had purchased the heroin?

A. Approximately ten minutes elapsed, at which time the jitney cab came to the Spot Tavern, and the girl proceeded to walk down Maple Avenue, and I entered the cab and went to the Morris Restaurant where I had left my Government vehicle. I entered the automobile,
262 and a short distance away I met other narcotic agents and had a conference with them. I then preceeded to the office of the Bureau of Narcotics, Room 817, New Post Office Building, Chicago.

Q. Did you meet anyone there?

A. Yes.

Q. Whom did you meet?

A. I met Agent Gjertsen.

Q. Did you have a conversation with him at that time?

A. Yes, I did.

Q. Did you give the package that you have just identified to Agent Gjertsen?

A. Yes, I initialed the package and gave it to Agent Gjertsen.

Q. Do you know what Agent Gjertsen did with it at that time?

A. No, not of my own knowledge.

Q. You were not present?

A. No.

Q. Referring back a moment to May 22nd, the transaction of May 22nd, what did you do with the package you purchased on that occasion which is Government's Exhibit No. 8 for identification?

A. I gave it to Agent Gjertsen after I returned to the office of the Bureau of Narcotics at Chicago, Illinois.

263 Mr. Grady: Cross-examine.

Mr. Pincham: I have a motion, if the Court please, I would like to make concerning his testimony.

The Court: I will have to excuse you a few minutes, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Do you want the witness off the witness stand?

Mr. Pincham: May I, please?

The Court: All right, you may step out.

(The following proceedings were had out of the presence and hearing of the witness.)

Mr. Pincham: At this time, if the Court please, I would like to make a motion, and I do make a motion that the Court strike the testimony of the witness Turnbou relating to the various events and circumstances and occur-

rences and facts that occurred on July 5, 1956, between him and the defendant Edward Minor. The basis of that motion, if the Court please—I am also asking the Court please—I am also asking the Court therefore to instruct the jury to disregard his testimony as to the defend-
264 ant Maroy, and as to the defendant Minor under the 12th count; the reason being, if your Honor please, there is not one scintilla of testimony in this record to connect in any way the defendant Jessie Maroy with this particular transaction. Now, they allege, of course, that an overt act was committed on the 6th of July by Edward Minor. Even at that, to show an overt act, the Government must show through competent testimony from the witness stand the connection of another defendant, that is, the co-conspirator, with that particular overt act. They just cannot show acts, period, but some testimony connecting the alleged co-conspirator with that particular overt act.

There is nothing in this record to connect the defendant Maroy to the instances, the facts and circumstances as related by Turnbou with Minor on July 5, 1956, and the early morning of July 6, 1956.

The Court: Well, once a prima facie case has been established, and rightly or wrongly we have ruled that it has been, it is all in against all the conspirators.

Mr. Pincham: But if that particular overt act committed by a defendant, Judge, there must be some testimony to show that that particular overt act was committed pursuant to the conspiracy. We have nothing here to show that.

The Court: If it was, it is a question of fact for the jury.

265 Mr. Pincham: But there is no evidence, Judge, to connect this particular overt act with any conspiracy, and until that is done, the overt act is not admissible.

Mr. Grady: May I say this, your Honor?

The Court: Yes.

Mr. Grady: That Agent Gjertsen has testified that on the evening of July 5th he observed the defendants, both of them, to leave the premises together at 111 North Wood Street and get into an automobile, which automobile belonged to Jessie Maroy, and drive to the corner of Hoyne and Madison together, where the defendant Minor dismounted and met with the witness Turnbou.

Now, I think that is sufficient showing. The fact really that the defendant Maroy delivered, in our interpretation, delivered the defendant Minor to a prearranged rendezvous with the witness Turnbou for the purpose of transacting a sale in furtherance of this conspiracy—

Mr. Pincham: I will submit, your Honor, first, there is no evidence, but even assuming that there is, it does not connect the defendant Maroy with this particular transaction.

Assuming for the sake of argument they are together and present, as I will attempt to point out to the Court a little later on in this case, presence is insufficient
266 to connect the defendant with a conspiracy. You don't show knowledge on their part—

The Court: The Government does not rely altogether on presence. We have to repeat here. You have said that two or three times, that the Government does not rely on presence alone. Mr. Grady has indicated what additional evidence there is here, if believed by the jury.

I will deny your motion, Mr. Pincham. How long do you think you will be occupied in the cross examination of this witness? I would like to let him go and get on about his duties if we can. Will your cross examination be characteristically extended?

Mr. Pincham: Yes, I am sure it will, your Honor.

Mr. Grady: Your Honor, I would like to say some-

thing at this point. I have not ventured any objections to Mr. Pincham's cross examination. I presume there is a purpose for it. Sometimes it does seem to be overdone.

The Court: Mr. Pincham is a student of the Clayton school on cross examination.

Mr. Pincham: Thank you.

Mr. Grady: I presume if I were to object I would be overruled, and I didn't want to interfere.

The Court: I seldom interfere with a lawyer's technique.

Mr. Grady: I know that.

The Court: There are times when some of the 267 questions he asked I thought maybe better not be, but I don't run a lawyer's lawsuit for him. If you object to any particular question, I will be glad to rule on it. I thought on occasions you did go over the ground.

Mr. Grady: The objection would be in terms of relevancy.

The Court: There is too much repetition, but that is his way to try a lawsuit.

Mr. Grady: It may turn out to be successful, too.

The Court: Since I get the impression you will not complete your cross examination of this witness, if you will put the witness on the stand, Mr. Marshal, and call in the jury.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Ladies and gentlemen, we will adjourn until tomorrow at ten o'clock.

(Thereupon, at 4:30 p. m., an adjournment was taken until 10:00 a. m. of the following day, January 4, 1957.)

268

IN THE UNITED STATES DISTRICT COURT
Northern District of Illinois
Eastern Division

* * (Caption No. 56 CR 429) * *

Before Judge Hoffman and a Jury, January 4, 1957, 10:00 o'clock, a. m.

The hearing resumed pursuant to adjournment.

Appearances:

(Same as before.)

269 The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor, cause on trial.

(The following proceedings were had out of the presence and hearing of the jury.)

The Court: Is there anything, gentlemen, before we bring the jury in?

Mr. Grady: Yes, your Honor. I did some research, and I would like to discuss again the question of a telephone conversation, if I may.

As I recall yesterday Mr. Pincham and the Court were of the opinion that a telephone conversation is admissible only if the witness recognizes the telephone voice of the party on the other end of the line, by reason of prior telephone conversations.

There is a Seventh Circuit Case, United States against Bukur, 194 Fed. 2d.

The Court: Now, excuse the interruption, Mr. Grady. You asked that question of the witness who is now on the stand, Mr. Turnbou?

Mr. Grady: That is correct. I have stated that I had no further questions of the witness. However, I would, if the Court feels that at the conclusion of my argument here that I am correct, I would ask the Court's permission

and discretion to allow me to reopen the direct examination.

270 The Court: I certainly will hear you. I just want to see what I had here if anything, on it. Would you get the 308 Illinois Supreme, please? Did you see the Bell against McDonald case?

Mr. Grady: No, I have not.

The Court: That is an Illinois Supreme Court case. It may help you. There are some jurisdictions which hold that one must be familiar with the telephone voice of the person, and then there are some cases that hold familiarity with the speaker's voice is enough.

Mr. Grady: That would be my position.

The Court: Ordinarily in trials here, I have met few objections on the ground asserted by Mr. Pincham, and I follow my usual practice of resolving doubts in favor of defendants where there is some doubt.

This is considered not a leading case in Illinois, but an important case. It is Bell versus McDonald, 308 Illinois, 329. I am trying to find the part of the opinion which deals with the subject. This is at Page 338 of that opinion.

"The appellant insists that it was error to permit the appellee to testify to his telephone conversation with the appellant because the preliminary proof was not sufficient. The appellee testified to his acquaint-
271 ance with the appellant for 15 years, and familiarity with his voice, to having heard him talk probably once or twice a year, and to recognize his voice over the telephone. It is common knowledge that an individual may be identified by the voice though identification by sight is more usual than by hearing. And perhaps more satisfactory and less liable to error. Still the latter method cannot be ignored as incompetent, and a party offering such evidence has the right

to have it considered. Its weight is only a question for the jury to determine in connection with all the circumstances appearing in the case."

And then cites people against Helm, 283 Illinois 370.

That case, Mr. Pincham, would seem to be against you and it is the best expression of the law in the State of Illinois that I know about.

Now, tell me about this Seventh Circuit case, please, Mr. Grady.

Mr. Grady: This case was decided in 1952. The opinion was written by Judge Lindley. The case involved three defendants. One of the defendants died prior
272 to trial and the other defendant apparently pleaded guilty and testified for the Government, so we had only one defendant on trial.

The charge was conspiracy as it is in this case to violate, however, a different section of the United States Code, 2313, the stolen automobile section.

The co-conspirator who testified for the Government against the accomplice in this case testified to two telephone conversations, and those conversations were alleged to be erroneously admitted on appeal.

I should point out that this case was reversed on entirely different grounds, but I think—the Seventh Circuit opinion was not reversed, but this opinion reversed the judgment of the trial court on different grounds, but here is what the Court had to say about the telephone conversation. The Court held that these were not erroneously admitted. The conversations were first a conversation which was initiated by the co-conspirator who testified for the Government with the appellant on the other end of the wire. There was no evidence that there had been a prior telephone conversation between these two, but he stated that he recognized the voice. Then about halfway through that conversation the co-con-

spirator who is now dead according to the testimony
273 of the other co-conspirator took over on his end of the phone and completed the conversation with the appellant. That conversation, both the initial part between the co-conspirator who testified, and the co-conspirator who was then dead, was testified to by the co-conspirator in the trial.

The appellant alleged first that as to the initial part of the conversation there was not sufficient identification of him, and secondly that it was error for the Court, the trial court, to assume that the appellant continued to be on the other end of the wire after the second conspirator took over the conversation.

The second conversation to which the co-conspirator testified was a conversation which he overheard between the dead co-conspirator and the appellant. The witness had not been in on that conversation at all. He had just heard the dead co-conspirator call the appellant by the name of Johnny over the telephone and had heard him discuss certain aspects of the transaction with him. Both of those conversations, or if you will, all three of those conversations were allowed to go in. Now, here is what the Seventh Circuit had to say about it.

"Though during the early history of the telephone,
274 the Court were prone to demand that an individual first be able to recognize the voice of the party with whom he allegedly conversed before he could testify as to the transactions and declarations of the person. With the passage of time and increased familiarity with the use of the telephone such a strict test fell into disfavor."

Citing Jones Commentary on Evidence, and citing Wigmore on evidence, Section 2155.

"But even with the trend towards liberality in authentication, the courts quite generally still de-

mand a reasonable degree of identification before such conversation can be admitted."

Citing another Seventh Circuit Case:

"When substantial evidence of authentication is present, it becomes a question of fact as to whether the conversation was had with the alleged other party. This evidence may, of course, be circumstantial. Furthermore, the same rules of authentication appear to be applicable in the case of a bystander testifying as to the declarations of one party
275 in a telephone conversation. That is, if there is evidence that the conversation was in fact had between two designated persons, a bystander may testify as to the declarations he has overheard."

Now, I would like to read from the section by Wigmore.

The Court: Volume 7?

Mr. Grady: Volume 7, Section 2155. The caption of the section is Reply-Telephone.

"In proving the receipt of a communication by telephone, any of several distinct principles of evidence may be involved and give rise to distinct objections, whose validity may rest on different considerations.

"1. B asserts that certain words (assumed to be receivable as admissions or the like) were uttered to him by A over the telephone. How can B testify that the antiphonal speaker was A? This involves genuinely the principle of authentication and three situations are to be distinguished."

Now, the first situation here I think is the one we have.

"It is generally conceded that a person may be
276 recognized and identified by his voice if the hearer is acquainted with the speaker's voice. Assuming then that B is thus acquainted with A's voice, and voices can sometimes be distinguished on the telephone, and

that B did in this instance distinguish A's voice, then B's belief that A was the speaker is founded on sufficient evidence. This much seems to be generally accepted."

Then he goes on to another situation:

"But if there is no recognition of the voice, what can supply sufficient evidence to authenticate the antiphonal speaker? In a given case no doubt, sundry circumstances (including other admissions and the like) may suffice but apart from special circumstances can any rule be laid down? And (c) No one has ever contended that, that if the person first calling is the very one to be identified his mere purporting to be A is sufficient any more than the mere purporting Signature on a letter would be sufficient."

And then the conclusion:

"The only case practically presented therefore is that of B first calling up A and being answered by
277 a person purported to be A. There is much to be said for the circumstantial trustworthiness of mercantile custom by which an average experience—"

The Court: You are getting into something else now.

Mr. Grady: I would point out that nowhere, either in the opinion or in Wigmore is there any indication that the recognition of the voice—

The Court: I will let you reply to that, Mr. Pincham, and before you do, the Government is willing to assume the risk, in the event of a conviction of possible error?

Mr. Grady: I think on the basis of the evidence that we can adduce, the Government is willing to assume that risk.

The Court: I will hear you in reply, Mr. Pincham.

Mr. Pincham: Well, Judge, the very part that Mr. Grady has read to your Honor from Dean Wigmore is the question here is dispute:

"The only case practically presented therefore is that of B first calling up A and being answered by a person purporting to be A."

Now, that is the very problem we have. That is the very thing that Dean Wigmore says presents a problem. And that is what you have here.

Now, in the authority he cites, you don't have an agent calling a defendant, you have a co-conspirator, and
278 I would assume from the facts of the case, although I have not read it, that by virtue of previous association among the conspirators that, having previously heard his voice, or what have you, that that foundation was raised, but in this case, first of all, there was absolutely no foundation laid as to the conversation.

The Court: He, as I understand it, will testify or has testified already that he knew the voice, not necessarily the voice on the telephone, but his voice.

Mr. Pincham: Yes, Judge, but—

The Court: It is easy to see how a mistake can be made. I have telephoned people and had them, when they ought to have recognized my voice, fail to recognize my voice. Sometimes they thought I was somebody else other than the person I am. I can see how the argument can be made. It is a question of weight rather than authenticity altogether, and the authenticity has to be established by weight.

Since the Government is willing to assume the risk, and I am not completely satisfied about it, I will take the telephone conversation and let the witness testify. Of course, you may impose the same objections you made before. This Section 2155 of Volume 7 is cited repeatedly for that position. As a matter of fact, Professor Cleary of the University of Illinois Law School, in a little
279 volume on evidence which was published within a matter of months cites that section as authority for the position taken by Mr. Grady.

Is there anything further before we bring the jury in?

Mr. Grady: Your Honor, I will point out now in reopening this subject, with the witness, I wish to bring out the fact there were two other conversations in addition—

The Court: Well—

Mr. Grady: I am not going into the substance of them. There were three telephone conversations.

The Court: You ask your questions. You haven't started your cross examination.

Mr. Grady: No, he has not.

Mr. Pincham: No, I have not.

The Court: Well, you may continue with your direct examination, and you may make such objections as you think are proper to bring in the jury.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Will you continue with the direct examination of this witness, Mr. Grady.

WILLIAM TURNBOU, called as a witness on behalf of the Government, having been previously sworn, 280 resumed the stand and testified further as follows:

Direct Examination (continued) by Mr. Grady.

Q. You are the same William Turnbou who testified in this cause yesterday, are you not?

A. Yes, I am.

Q. Mr. Turnbou, you testified concerning a transaction with the defendant Edward Minor on the 22nd of May. Did you have any other conversation with the defendant after that date?

A. Yes, I did.

Q. When was the next time you had a conversation with him?

A. June 29, 1956.

Q. What was the duration of that conversation, if you can recall?

A. Well, actually, I had two conversations. The first conversation last about ten minutes, and I had another conversation which lasted approximately 20 minutes.

Q. Those were both on the same date, is that correct?

A. Yes.

Q. Now, did you have any other conversation after that date and prior to July 5?

A. Yes, I did.

Q. That was with the defendant Edward Minor?

281 A. Yes.

Q. What date did that take place on?

A. I am sorry. Did you say before July 5.

Q. Before July 5th.

A. I had a conversation before the 29th of June, 1956. Do you refer to any such conversation? I don't understand the question. I am sorry.

Q. How many conversations in all did you have with the defendant Edward Minor prior to July 5th?

A. Three.

Q. Now, calling your attention to the morning of July 5, 1956, will you tell the Court and jury what you did on that morning?

A. I went to the vicinity of Madison and Hoyne and 111 North Wood Street, and then 1941 West Warren Boulevard, which is the location of the Charles Hotel in a search for Edward Minor, and also made several telephone calls in attempting to locate Edward Minor.

Q. Did you make a telephone call to the Charles Hotel that morning?

A. I made a telephone call that morning but I didn't contact Edward Minor.

Q. Did you contact Edward Minor on that morning?

A. Not on that morning, no.

282 Q. Did you contact Edward Minor on July 5th at all?

A. Yes, I did.

Q. Will you tell us how you first established contact with him?

A. About nine p. m. on July 5th, 1956, from the office of the Bureau of Narcotics of Chicago, Illinois, I placed a telephone call to Seeley 3-9843.

Q. Where did you obtain that number?

A. I obtained the number from a small card which Agent Gjertsen had given to me.

Q. What happened after you called that number?

A. A person answered the telephone, and I asked to speak—.

Mr. Pincham: I object.

The Court: I will overrule the objection.

The witness may continue with his answer.

By Mr. Grady:

Q. Will you state what you said after the person answered the telephone?

A. I said, "Let me speak to Loose Tooth."

Q. What happened after that?

A. After a short pause, another man answered the telephone and said, "Is this—"

Mr. Pincham: I object to anything that was said at this time over the telephone. May that objection stand throughout his testimony so that I don't have to keep

283 repeating it.

The Court: Yes, it may stand, and it will be overruled.

By Mr. Grady:

Q. Did you recognize the second voice you heard over the telephone at this time?

A. Yes, I did.

Mr. Pincham: That is objected to, if the Court please, the form of the question.

The Court: That is what we require evidence on if this is to be received at all, Mr. Pincham. I will overrule the objection.

By Mr. Grady:

Q. Will you answer the question?

By The Witness:

A. Yes, I recognized the voice.

Q. Whose voice wat it?

A. It was the voice of Edward Minor.

Q. Was there a conversation between you and him at the time over the telephone?

A. Yes, there was.

Q. Will you state what you said to him and what he said to you?

A. I said, "I want to pick up a piece the same as I had before."

284 Q. Did you identify his voice in any way?

Mr. Pincham: I object to that. That is leading and suggestive.

The Court: The form of the question is bad, Mr. Grady. He may testify what the conversation was.

By Mr. Grady:

Q. Will you start at the beginning and tell what you said to him and what he said to you?

A. I asked the person on the phone if I could talk to Loose Tooth. Then there was a pause, then another voice came over the phone and I asked, "Is this Loose Tooth?" And the person said, "Yes."

I said, "This is your boy, you remember from the other day."

He said, "Yes, I know who you are."

And then I said, "I want to pick up another piece."

Q. What does the expression "piece" mean?

Mr. Pincham: I object to that, if the Court please.

The Court: Meaning in what connection?

By Mr. Grady:

Q. Mr. Turnbou, you testified you have been a
285 Federal narcotics agent for about three years, is that correct?

A. Yes.

Q. And in the course of your experience, have you had dealings and transactions with persons who traffic in narcotics?

A. Yes.

Q. Has the expression "piece" ever been used by any such person in such transaction?

A. Yes, usually the word "piece" is used.

Q. Does that word have an established meaning in the narcotics traffic to your knowledge?

A. It does.

Q. Will you state what that meaning is?

A. It means one ounce of heroin.

Q. Will you proceed with the conversation.

A. Edward Minor said, "Okay."

I then said, "Well, when can I see you, and where?"

Edward Minor said, "Well, meet me at Madison and Hoyne at about 10:00 o'clock. I will be there."

Q. Was there anything said after that?

A. No, I hung up.

Q. Then you have testified previously that you did proceed to Madison and Hoyne and Met the defendants there at about 10:00 o'clock, is that correct?

286 A. That is correct.

Q. Will you describe—when did you first see the defendant when you were standing on the corner there at Hoyne and Madison at 10:00 o'clock?

A. On the 5th of July?

Q. Yes.

A. Well, I first observed Edward Minor. He was walking on the south side of Madison Street walking west. I guess he must have been about ten feet from me when I noticed him.

Mr. Grady: You may cross-examine.

Cross Examination by Mr. Pincham.

Q. When did you first meet Thomas Cross?

A. On May 22nd, 1956.

Q. And I take it prior to May 22nd, 1956, you did not know Thomas Cross?

A. That is correct. I did not know him.

Q. You met him in your office at the New Post Office Building?

A. That is correct.

Q. Now, I take it at the time you had a conversation with Cross?

A. Yes.

Q. And after this conversation you, with Cross, 28 went to the vicinity of Hoyne and Madison Streets?

A. That is correct.

Q. Approximately what time was it that you arrived there?

A. Oh, probably it would be between 4:15 and 4:30, around that time.

Q. Are you now assigned to the Chicago office of the Narcotics Bureau?

A. Yes, I am.

Q. Were you assigned to the Chicago office of the Narcotics Bureau on May 22nd, 1956?

A. Yes, I was.

Q. When were you first assigned to the Chicago office?

A. January of 1953.

Q. Have you been continuously and uninterruptedly as-

signed to the Chicago office from January 1953 up to May 22, 1956?

A. I would say I was assigned, however, not without interruption.

Q. Well, were you in Chicago at the Chicago office during the first part of May 1956?

A. It would be difficult for me to say. I am out quite often. I couldn't answer that.

Q. Well, were you in the Chicago office on May 10, 1956, that is, were you assigned to the Chicago office on May 10, 1956?

A. Yes, I have been assigned to the Chicago office 288 since I was an agent.

Q. Now, up to May 22, 1956, had you ever seen to recognize Edward Minor the defendant?

A. No, I had not.

Q. Up to May 22, 1956, had you ever seen Jessie Maroy?

A. No, I had not.

Q. Now, you went into a tavern on the northeast corner of Hoyne and Madison Street on the 22nd day of May, 1956, did you not, sir?

A. Yes, sir, I did.

Q. You later left the tavern, did you not, sir?

A. That is right.

Q. When you left the tavern, you got into an automobile?

A. Yes.

Q. Did anyone get into the automobile with you?

A. Yes.

Q. And it was at that time that you went to the vicinity of Sacramento and Albany and Washington and Warren, is that correct?

A. That is correct.

Q. And Cross was with you, was he not, sir?

A. Yes, he was.

Q. After you left the vicinity of Hoyne and Madison Street, and before you returned to your office that evening, did you see the defendant Jessie Maroy?

289 A. No, I did not.

Q. After you left the vicinity of Hoyne and Madison Streets, or before you left the vicinity—strike that.

After you left the vicinity of Hoyne and Madison Streets, and before you say Edward Minor in the vicinity of Hoyne and Madison, did you see the defendant Edward Minor?

A. I don't understand your question. Will you repeat it, please.

Q. I will rephrase it, yes.

After you left the vicinity of Hoyne and Madison Streets on the evening of May 22nd, 1956, in the company of Cross, when was the next time, or when was the first time that you saw Edward Minor after you left Hoyne and Madison?

A. I saw Edward Minor almost, about two or three minutes after I arrived in that vicinity. He was walking on Warren Boulevard towards Sacramento.

Q. Was he alone at that time or was he with someone?

A. He appeared to be alone.

Q. And from the time you left Hoyne and Madison Streets up to the time you saw Minor on Warren as you have indicated, you don't know where he was, do you, sir?

A. No, I don't know where he was.

Q. You don't know with whom, if anyone, he
290 spoke during that period, do you, sir?

A. No, sir.

Q. And I believe you have informed the Court and the jury that Minor handed you a package wrapped in a telephone wrapper, a telephone page wrapper while you were in the alley?

A. That is correct.

Q. When was the first time that you saw this package?

A. At about 5:10 P. M. on May 22nd, 1956.

Q. And in whose possession, if anyone, was the package when you first saw it?

A. It was in Edward Minor's possession.

Q. And after you receiving the package, you and Cross then came back to town to your downtown office?

A. That is correct.

Q. Now, I believe you stated that the next time that you saw Minor was on the 5th of July, 1956, is that correct, sir?

A. Not entirely.

Q. I will withdraw the question and ask you this. The next time you had a conversation with Minor was on July 5?

A. No, that is not correct.

Q. When was the next time after May 22nd that you had a conversation with Minor?

A. On June 29th, 1956.

291 Q. Where were you when you had that conversation?

A. The first conversation was at the Charles Hotel.

Q. Were you at the Charles Hotel at that time?

A. Yes.

Q. Was Minor at the Charles Hotel at that time?

A. Yes, he was.

Q. Did you see the defendant Jessie Maroy at the Charles Hotel at that time?

A. No, I did not.

Q. Then you had a second conversation with him on the 29th of June, is that correct, that is, with Minor?

A. That is correct.

Q. Where did that second conversation take place?

A. 111 North Wood Street.

Q. Were you on the street, or were you in the building?

A. We were on the street, not in a building.

Q. Approximately what time was it you had this second conversation with Minor on the 29th of June?

A. Oh, it was in the early night, about 8:00 o'clock, I think, about that time.

Q. Did you see the defendant Jessie Maroy on the 29th of June?

A. No, I did not.

Q. Now, on July 5th, 1956, you saw the defendant Edward Minor?

292 A. That is correct.

Q. Where was he when you first saw him?

A. When I first saw Edward Minor on July 5th, 1956, he was about ten feet from me walking west on the south side of Madison Street.

Q. Between what two streets, if you know?

A. Well, it was Hoyne and the first street east of Hoyne.

A. I couldn't say definitely. You may be correct

Q. Now, was Minor alone at that time or was he with someone?

A. He was alone.

Q. Did you see Jessie Maroy at that time?

A. No, I did not.

Q. Did you see Jessie Maroy at all on the 5th of July, 1956?

A. No, I didn't.

Q. Did you have a conversation with Minor on Madison Street between Hoyne and the next street east of Hoyne?

A. Yes.

Q. After this conversation, did you go some place?

A. Yes, I did.

Q. Where did you go?

A. I went to the restaurant which is located in the basement near the intersection of Hoyne and Wash-
293 ington Streets. I think it was Morris' restaurant.

Q. Did you go to Morris' restaurant alone or were you with someone?

A. I was alone.

Q. Now, after this conversation and before you entered Morris' restaurant, did you observe in which direction the defendant Edward Minor went?

A. No, I did not.

Q. Now, how long were you in Morris' restaurant before you left?

A. I was there for approximately an hour and say ten minutes.

Q. During the hour and ten minutes that you were in Morris' restaurant, did the defendant Edward Minor come into Morris' restaurant?

A. No, he never came into the restaurant.

Q. Did the defendant Jessie Maroy come into the restaurant?

A. No.

Q. When you left the restaurant, you went to your automobile?

A. That is correct.

Q. And your automobile was parked on what street, sir?

A. On Hoyne.

Q. You got into your automobile?

294 A. Yes, I did.

Q. After you had gotten into your automobile, you then saw the defendant Edward Minor?

A. That is correct.

Q. Was the defendant Edward Minor walking when you saw him?

A. No.

Q. Was he in an automobile?

A. Yes, he was.

Q. I believe you told the Court and jury that it was a green Plymouth.

A. Yes.

Q. Do you remember the license number of that Plymouth?

A. I think it was a 1956 Illinois registration 1941999.

Q. Do you know now in whose name that automobile is registered?

A. No, I do not.

Q. You got out of your automobile and went into the automobile in which the defendant Edward Minor was driving?

A. Yes.

Q. Did you go some place?

A. Yes.

Q. Where did you go then?

A. We went to the Bird Land Liquor Tavern.

Q. That is located where?

295 A. That is between the 2900 and 3000 block on West Madison. I am not certain of the address. I think it is 2928.

Q. Did you see the defendant Jessie Maroy in the Bird Land Liquor?

A. No.

Q. How long were you in the Bird Land Liquors before you left?

A. About 15 minutes.

Q. Did you leave alone or with someone?

A. I left with someone.

Q. Who was the someone with whom you left?

A. Edward Minor and a female.

Q. When was the first time that you saw this female on this date, on this evening?

A. I first noticed her when I was in the Bird Land Liquors for about five minutes.

Q. And when you noticed the female and Minor leave the Bird Land Liquors, where did you go?

A. We returned to the Plymouth automobile.

Q. Did you go some place in the Plymouth automobile?

A. Yes, we did.

Q. Where did you go then?

A. We went to 1710 West Maypole Street.

Q. What is located there?

296 A. I think it is the Spot Tavern.

Q. Did you see the defendant Jessie Maroy in the Spot Tavern?

A. No, I didn't.

Q. While you were in the Spot Tavern, you gave the defendant Edward Minor some money?

A. Yes, I did.

Q. And you were given a package in the Spot Tavern?

A. Yes.

Q. When was the first time that you saw the package that you were given in the Spot Tavern?

A. About 12:15 a. m., July 7th—or rather the 6th, 1956.

Q. Was it in anyone's possession when you saw it?

A. Yes, it was.

Q. In whose possession?

A. It was in the possession of the female that I had previously described.

Q. Were you present when this female received the package?

A. I didn't see her receive it.

Q. You put the package in your pocket, and I am referring to Government's Exhibit 11. You put Government's Exhibit 11 in your pocket, and waited there until a cab arrived?

A. Yes.

Q. I will show you the exhibit so that you know what I am talking about.

297 A. Thank you. Yes, I did.

Q. Government's Exhibit 11 is the package which was given to you by this female?

A. That is correct.

Q. Now, you left the Spot Tavern and you went back to where your car was parked on Hoyne? Was it on Hoyne?

A. Yes, it was on Hoyne.

Q. Did you not, sir?

A. Yes, sir.

Q. And enroute to your car from the Spot Liquors to your car on Hoyne, did you see the defendant Jessie Maroy?

A. No, sir, I did not.

Q. And up to the time of the arrest of the defendant, Jessie Maroy, had you ever engaged in a conversation with Jessie Maroy?

A. No, I have never engaged in a conversation with Maroy.

Mr. Pincham: That is all.

(Witness excused.)

The Court: Any redirect?

Mr. Grady: No. We have a stipulation I would like to read into the record.

The Court: Go ahead.

Mr. Grady: (Reading)

"It is stipulated by and between the United States
298 of America and Jessie Maroy and Edward Minor, by their respective attorneys, that if Charles F. Carpentier, Secretary of State of the State of Illinois, were called to testify in this case, he would testify as follows:

"That the records of the State of Illinois pertaining to automobile registrations are kept and maintained in the ordinary course of business by the office of the Secretary of State and under his supervision, and said records show that in 1956 Pontiac automobile bearing 1956 Illinois registration No. 2713054 was, during the period covered by this indictment, registered to one Jessie Maroy, whose address is listed in said records as 3251 West Washington Street, Chicago, Illinois."

Is it so stipulated, Mr. Pincham?

Mr. Pincham: It is.

The Court: I instruct you, ladies and gentlemen of the jury, that you may accept as a fact what Mr. Grady has read as representing the stipulation of the parties, in other words, the agreement of the parties.

299 DAVID D. SPILLANE, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct Examination by Mr. Grady.

Q. What is your name, sir?

A. David D. Spillane.

Q. What is your occupation?

A. I am a Treasury Enforcement Agent attached to the Bureau of Narcotics, Chicago, Illinois.

Q. How long have you been a narcotics agent?

A. Two years.

Q. Do you know the defendants in this case, Jessie Maroy and Edward Minor?

A. Yes.

Q. Will you indicate Jessie Maroy.

A. Jessie Maroy is sitting to the right of his counsel

dressed—it looks like a light-colored sport shirt and a blue sweater.

Q. Will you indicate Edward Minor.

A. Edward Minor is seated to his right. It looks like he is wearing a brown shirt and a light shirt.

Mr. Grady: If the Court please, may the record show that the witness has identified the defendants, Jessie Maroy and Edward Minor.

300 The Court: It may so indicate.

By Mr. Grady:

Q. Mr. Spillane, calling your attention to May 10th, 1956, were you employed as a Federal narcotics agent on that date?

A. Yes, sir, I was.

Q. Were you on duty at that time?

A. Yes, sir.

Q. Did you see the defendants or either of them on that day?

A. Yes, I did.

Q. Where did you see them?

A. I first saw them in the afternoon, late afternoon, I would say between three and four o'clock, or five o'clock. I am not certain of the time. They were on Madison Street slightly east of Hoyne Street.

Q. Where were you?

A. I was in a vehicle in the vicinity. I was in the vicinity of Hoyne and Madison Streets. I was in various positions. I was on surveillance. I was parking and moving and parking.

Q. Was there anybody else with you?

A. To the best of my recollection, yes, there was, Agent Tremoglie was with me.

Q. What, if anything, did you observe about the

301 defendants, or observe the defendants do.

A. When I first arrived on the scene at Hoyne and

Madison, I was observing Agent John Gjertsen and Special Employee Cross.

Q. Did you know Thomas Cross?

A. Yes, I did. I was watching them. According to prearrangement, I was waiting for them to meet somebody.

Mr. Pincham: I object, according.

The Court: Yes, "according to prearrangement," those words may go out and the jury will disregard them.

By the Witness:

A. So, as I was watching them, I noticed a 1956 two-tone brown and green Pontiac drive up, and I saw two people get out of the car.

By Mr. Gardy:

Q. Did you notice the license number of that automobile?

A. I knew it at the time, but I have forgotten the number. I saw Jessie Maroy and Edward Minor get out of the car and stand on the street. To the best of my recollection, they were on the south side of Madison just a little bit east of Hoyne. I was watching them and watching Agent Gjertsen with special employee Cross.

Q. What, if anything, did you see these persons do?

A. I saw Maroy raise his arm as if in greeting to
302 Special Employee Cross. Then I saw—to the best of my recollection, I saw him cross the street, or both of them cross the street.

Q. By both of them, you mean Maroy and Minor?

A. Maroy and Minor, yes. They crossed Madison Street over to the north side, if I am not mistaken, and I saw Maroy and Minor and Agent Gjertsen and Cross standing there a little bit as if they were having conversation. I could not hear anything they were saying. I was too far away.

Q. Did you leave the scene after that?

A. I stayed there for a short while until I saw Maroy leave. He went, to the best of my recollection, he walked east on Madison Street and entered a building or something, a bar, and I saw Minor disappear from my view, and I was watching Agent Gjertsen and Cross most of the time after that.

I saw them walk up the street, walking west on Madison up to Leavitt where there was a tavern on the corner, and I followed them in the car and saw them go in the tavern.

Q. What happened after that?

A. They were in the tavern a short time.

Q. Were you parked in your car at that time?

A. Yes, I was parked on Leavitt on the west side 303 of the street so that I could look right into the back door of the tavern. Shortly thereafter, I would say 15 minutes, I saw the same gentleman, Mr. Minor, walk into the tavern. He was in there a short while.

Q. Did you see how he arrived at the tavern?

A. I didn't see how he arrived. After he came out, I saw how he arrived, however, because when he came in he bumped my truck, my vehicle when he was parking right directly behind me. I didn't know it was him at the time because I was not looking out the back. I was watching the tavern.

Q. Did you notice what automobile it was?

A. Yes. When he came out of the tavern a short while later, he came across the street right behind my car, or my truck, and he got into a green Plymouth, about 1949, and the license number of that car was 1941999, 1956 Illinois plates.

Q. Did you see anything after Minor went into the tavern?

A. I merely saw him come back out.

Q. Then what, if anything, did you do after that?

A. He got into his car and drove out of my view.

Q. Did you see Gjertsen and Cross after that time?

A. I waited for a short while, then I saw Gjertsen and Cross come out. Then I saw them walk up back to
304 where they had their car parked, back towards Hoyne.

Q. What did you do after that?

A. After that I left and went back to the office of the Bureau of Narcotics.

Q. Now, calling your attention to the 22nd day of May, 1956, did you see the defendants or either of them on that day?

A. Yes, I did.

Q. Which one did you see, or did you see both?

A. I saw them both that day.

Q. Where did you see them?

A. I first saw Edward Minor arrive in the vicinity of Sacramento between Washington and Warren Avenue.

Q. Were you—

A. I was in the vicinity at the time.

Q. Were you on foot or were you in a vehicle?

A. I was in a vehicle.

Q. Was there anyone else with you at that time?

A. Yes, there was Agent Jack Love with me—no, I am sorry, Agent Gjertsen was with me that day, Agent Gjertsen, not Love.

Q. What did you see?

A. I saw Mr. Minor drive up, and if I am not mistaken, he parked his car on the one-way street east. I think it is Warren Avenue, maybe half a block west of
305 Sacramento. I saw him walk down to the corner and turn the corner and walk north on Sacramento and enter a building located between Warren and Washington on Sacramento. And then I saw him come out of that building, and I saw him go up an alley that parallels Washington which lies between Washington and Warren, between Albany and Sacramento. It was parallel to Washington.

Q. Did you see anybody else in the alley?

A. Yes, I did.

Q. Who did you see?

A. I saw Agent Turnbou and Special Employee Cross.

Q. Were all three of these parties in the alley at the same time?

A. They met in the alley.

Q. Did you observe what, if anything, they did?

A. I merely saw them together. I didn't see anything else, but they were together.

Q. You didn't overhear any conversation?

A. No, I was too far away.

Q. What happened after that?

A. They were in the alley maybe less than a minute, in the group of three. Then Agent Turnbou and Special Employee Cross departed and went one way and Minor went the other way.

Q. Did you follow either of them at that time?

306 A. I followed Minor. He went back to where he had the 1956 Pontiac parked, and got in the Pontiac and drove east on Warren for maybe a block or two blocks. Then he made a right turn and went over to Madison Street and continued east on Madison back to the vicinity of Hoyne and Madison, and parked the car, and I noticed Jessie Maroy standing on the street directly to the side of where he parked the car.

Q. What did you see there?

A. I saw Minor get out of the car and walk over to Maroy. Then I saw his arm extended, and I saw Maroy's arm extended, and I saw contact made of some kind. I couldn't see what happened exactly, but I did see them extend arms as if to hand— Then they stood there for a while, maybe less than a minute, and talked. Then they got in the car and Maroy was driving the car, and they proceeded east on Madison out of my view.

Q. What did you do after that?

A. I discontinued my surveillance at that time.

Q. Now, calling your attention to the 5th of July of this year, did you see either of the defendants on that day?

A. Yes, I did.

Q. Did you see one or both?

A. I saw them both.

307 Q. Where did you see them?

A. I first saw them both in a parking lot at 111 North Wood Street in Chicago.

Q. About what time of the day was that?

A. It was in the evening. I would say between ten and eleven o'clock in the evening.

Q. Were you alone at the time or were you with someone?

A. No, I was with another agent. I was with Agent Love, I believe.

Q. What, if anything, did you see the defendants do at the time?

A. I am not sure whether it was Agent Love or Agent Gjertsen. I cannot remember, but I was on surveillance at that parking lot.

Mr. Pincham: Objection. There is no question pending.

The Court: Oh, yes, there is.

Mr. Grady: I asked him what, if anything, he saw the defendants do at that time.

By the Witness:

A. As I said, I was on surveillance at the parking lot watching the 1956—

Mr. Pincham: I move that be stricken as not responsive.

308 By Mr. Grady:

Q. What were you doing?

A. I was watching the 1956 Pontiac, two-tone brown and green Pontiac Catalina automobile.

Q. Was that the same automobile—

A. That was the same automobile I saw Maroy and Minor in before.

Q. What happened then?

A. While I was watching that car I saw Maroy and Minor come out of the apartment building at 111. They didn't go to the Pontiac. They went to a two-tone green Chevrolet. They got in the Chevrolet and drove out of the parking lot onto Wood Street, and they went south on Wood Street to Madison and made a right turn and went west up Madison to somewhere in the vicinity of Hoyne and Madison.

Q. Then what happened?

A. Maroy was driving the car, and I saw Minor get out of the car.

Q. At Hoyne and Madison?

A. Yes.

Q. What did Maroy do?

A. He kept on driving west.

Q. What did Minor do?

A. I followed Minor for two blocks. I didn't see 309 what Minor did. I lost him in the traffic.

Q. Did you see either of the defendants do anything after that?

A. No, I did not.

Q. Did you notice Agent Turnbou standing on the corner?

A. I did when I drove by the corner. I saw Agent Turnbou.

Q. Mr. Spillane, did you participate in the arrest of either or both of the defendants?

A. I didn't actually arrest them, but I was in the party that made the arrest.

Q. On the day these defendants were arrested, do you remember what day it was?

A. I think it was the 6th of July, 1956.

Q. Where did you first see the defendants on that day?

A. I first saw the defendant Edward Minor enter an apartment on West Washington. The address I am not sure of, but I think it was 3251, somewhere in that neighborhood, in an apartment that was rented to Jessie Maroy.

Mr. Pincham: I object to that, and move that it be stricken, and the jury instructed to disregard it.

Mr. Grady: I agree it should be stricken.

The Court: All right, it may go out, and the jury will disregard it.

310 By Mr. Grady:

Q. You first saw Edward Minor in an apartment?

A. Yes.

Q. At what address?

A. I am not positive of the address, but I think it was 3251 West Washington.

Q. When did you see the defendant Jessie Maroy?

A. In the same apartment later on, maybe 20 minutes later than when I first saw Minor.

Q. Were there any other agents there?

A. There were some agents and police officers.

D. Do you know whether or not the defendants were searched at the time?

A. I searched them after they were brought into the apartment. I detail searched them. They were evidently searched in a routine check for weapons. When they were arrested, myself and Agent Gjertsen made the detailed search of both defendants.

Q. Did you remove any personal effects from the persons of these defendants?

A. Yes, I did.

Q. Will you describe what you did remove?

A. I removed a wallet, a handkerchief, a comb, the usual things a man carries, and various rings of keys on both defendants.

311 Q. What did you do with the keys which you removed from both defendants?

A. I compared the keys from both defendants.

Q. When you say you compared the keys, what do you mean?

A. I compared the cuts on the keys.

Q. I beg your pardon?

A. I compared the various cuts on the keys to see if they were the same.

Q. After you had compared the cuts on the keys, what, if anything, did you do?

A. I observed that Jessie Maroy had a set of keys for the 1956 Pontiac in question, and that Edward Minor had a set, an identical set of keys for the Pontiac.

Q. How did you know they were identical?

A. I tried the keys later on that day.

Q. You tried one key from each defendant for the Pontiac?

A. That is right.

The Court: When you say you tried them, what do you mean?

The Witness: I opened the lock with the key.

By Mr. Grady:

Q. Now, you say you took some other keys?

A. Yes, I did. I took some apartment keys, and I tried the set of keys in Maroy's pocket in Apartment 1201 at 111 North Wood Street.

312 Mr. Pincham: I object, if the Court please. The keys are not in evidence.

By Mr. Grady:

Q. Do you know where those keys are now?

A. Yes, I gave them back to both defendants a day or so after they were arrested.

The Court: I will let the answer stand. I will overrule the objection.

By Mr. Grady:

Q. You started to answer the question.

A. I tried the keys that I had taken from Maroy in an apartment door, Apartment No. 1201 at 111 North Wood Street. His key fitted that door.

I also tried the key I took from Minor. He had one apartment key. It had a number on it. I think it was 1201 on the key. That fitted the door also.

Q. Is that the same door in Apartment 1201?

A. That is right. They both fit 1201.

Q. Did you find any other keys?

A. I found quite a few other keys, yes.

Q. Did you make any other comparisons of those keys?

A. Yes, I did, but I don't recall finding any similar — any more similar keys.

Q. How many apartments were there you compared keys to?

A. Well, there was the apartment at 111 North 313 Wood Street. That is Apartment 1201; two apartments in the building on West Washington. That is 3251 West Washington, and another room that was located in this building on Sacramento between Warren and Washington that I had seen Minor go into on numerous occasions.

Q. And these defendants had common keys to how many of those doors?

A. They had common keys —

Mr. Pincham: I object to that, if the Court please.

The Court: Yes, I will sustain the objection. I suppose you don't like the use of the word "common."

Mr. Grady: I will withdraw the question.

By Mr. Grady:

Q. You testified that you found that each defendant had a key which fit the door at 111 North Wood.

A. Yes.

Q. And each defendant had a key which fit the door at 1201?

A. In Apartment at 1201 at 111 North Wood.

Q. Apartment 1201 at 111 North Wood?

A. Yes, sir.

Q. Were there any other apartments to which each defendant had a key which fit?

314 A. I can't recall. I do remember they both had keys to the Pontiac and they both had keys that fit the door at 111 North Wood. I cannot recall whether they both had keys or not that fit the door to the apartment on West Washington. I don't remember.

Mr. Grady: No further questions.

The Court: Cross-examine, Mr. Pincham.

Cross Examination by Mr. Pincham.

Q. When you saw Minor and Maroy on the 10th day of May, 1956, did you see them before they got out of an automobile?

A. I saw the automobile drive up. I will put it that way. I didn't get a good look at them until they got out.

Q. Did you see the car parked?

A. Yes.

Q. And at the time you saw the car parked, did you see Gjertsen?

A. I believe I did, yes.

Q. Where was Gjertsen at the time you say the car parked?

A. I think he was on the south — excuse me, the north side of Madison a little bit east of Hoyne.

Q. I beg your pardon?

A. He was two or three doors east of Hoyne on 315 the north side of Madison.

Q. And I take it he was almost directly north of the point where the automobile parked?

A. I believe the automobile parked farther east.

Q. The automobile was east of the point where Gjertsen was at the time the automobile parked?

A. Yes, but not too much, not more than three or four car lengths.

Q. At the time you saw the car parked, did you see Cross?

A. I was watching both, but I couldn't see them all at the same time. I had to shift my vision from the car to where Cross was standing.

Q. Well, was Cross with Gjertsen at the time you saw the car parked?

A. Yes.

Q. Where were you, sir?

A. I was on the corner. Let me see, I was on the northwest corner of Hoyne and Madison.

Q. You were then to the west of the automobile at the time it parked?

A. Yes.

Q. And you were to the west of Gjertsen and Cross at the time the car parked?

A. Yes.

316 Q. And in which direction was that car going?

A. It was going — I think it was going south.

Q. On what street?

A. On Hoyne.

Q. And when you saw the car, were you north or south of Madison Street at the time you saw the car parked?

A. I was not on the corner, but I was on the north side of the street.

Q. Who was driving the automobile in which you were?

A. I was driving. I was sitting behind the wheel. I was not driving. I was parked.

Q. You were parked?

A. Yes, sir.

Q. And you were parked on the west side of Hoyne?

A. That is right.

Q. How many feet approximately were you from Madison Street?

A. I was almost blocking the crosswalk. I was very close to the corner.

Q. That is the crosswalk —

A. The sidewalk.

Q. From the west side of Hoyne to the east side of Hoyne, is that right?

A. That is right.

Q. You told the Court and jury you saw Minor, 317 Maroy, Gjertsen and Cross on the north side of Madison Street?

A. Not right then, I didn't see them, no.

Q. Did you at any time see them on the north side?

A. Yes. I changed my position about that time. I didn't state where I was at. I moved the car.

Q. Now, did you move your automobile before Minor and Maroy came across to the north side of Madison Street?

A. No, but it was almost simultaneous because when I saw them drive past me, I thought that was the car.

Q. You didn't answer my question. Did you move your automobile before Minor and Maroy crossed from the south side to the north side of Madison Street?

A. Oh, yes.

Q. Did you move your car before the automobile in which Minor and Maroy were riding was parked?

A. Yes, I did, because they were parking when I moved.

Q. In which direction did you move?

A. Past them. I drove past them.

Q. You drove west?

A. East.

Q. I am sorry. You drove east on Madison Street?

A. That is right.

Q. And you recognized the automobile when you saw it, did you not, sir, when you first saw it park?

A. I was not positive, but I was fairly certain.

318 Q. You were fairly certain. Did you recognize the defendant Maroy at the time you saw the car parked?

A. I did not recognize Maroy, no.

Q. Did you recognize Minor at the time you saw the car parked?

A. I had never seen either one before.

Q. Had they gotten, that is, Minor and Maroy, had they gotten out of the car before you proceeded past them?

A. I don't believe they had. They were just parking when I went by them.

Q. Now, when you proceeded east on Madison Street, how far east on Madison Street did you go?

A. Not more than 30 or 40 feet past where they were parked.

Q. When you got 30 or 40 feet past where they were parked, what did you do with your car?

A. I parked it.

Q. Did you park it on Madison Street?

A. Yes.

Q. Did you park it on the south side of Madison Street?

A. Yes.

Q. That was between Hoyne and Damen?

A. I believe so, yes.

Q. And when you parked your automobile, at the time you parked your automobile, had Minor and

319 Maroy gotten out of the car?

A. I don't think they had gotten out. I think I parked, and when I turned around they were getting out.

Q. When you turned around they were getting out, that is when you saw Maroy make a wave towards where Gjertsen and Cross were standing?

A. No, he didn't do it right then. It seems to me they got on the sidewalk on the south side of the street.

Q. Did he make this waving motion when he was on the south side of Madison Street?

A. I believe so.

Q. And when he made that motion, Gjertsen and Cross were directly across the street from Maroy and Minor on the north side of Madison Street, is that correct?

A. I cannot recall that they were directly across, but they were not very far off to either side of being directly across.

Q. And when you made that motion, that is when you say Minor and Maroy passed over to the north side of Madison Street?

A. I believe so, yes.

Q. You believe so?

A. Yes.

Q. Did you remain parked between Damen and Hoyne on the south side of Madison Street—strike that.

320 Did you see Maroy leave the company of Gjertsen and Cross and Minor?

A. To the best of my recollection, Maroy and Minor left the company of Gjertsen and Cross and then they split up.

Q. Where did you see Maroy go?

A. I think he came back across the street. I am pretty sure he did.

Q. When he came back across the street—

A. To the south side of Madison.

Q. When he came back to the south side of Madison Street, where did he go then?

A. I cannot remember, sir, whether he came back across to the south side or walked down Madison. I can't be certain—I was watching, more interested in watching Gjertsen and Cross and Minor than I was Maroy at that time. I cannot actually say whether he walked back across or walked on east or west.

Q. Now, you were more interested in observng Cross, Gjertsen and Minor, is that correct?

A. At that time, yes, when they broke up.

Q. Did you observe in which direction Minor went?

A. It seems to me he walked up east towards the corner of Hoyne.

Q. When Minor walked east—well, they were 321 standing east of Hoyne, were they not?

A. I am sorry. He walked west to Hoyne.

Q. Did you observe in which direction Gjertsen and Cross went?

A. They stood there for a half a minute or so on the street, then they eventually walked west up Madison.

Q. Did Gjertsen and Cross and Minor walk west towards Hoyne together?

A. No, I don't think so.

Q. Did Gjertsen and Cross walk west on Madison before Minor or after Minor?

A. I cannot remember.

Q. Where was Minor when you last saw him?

A. When I last saw Minor—

Q. Where was Minor when you last saw him after Maroy had left?

A. I think he was still on the north side of Madison.

Q. Was he in the company of Gjertsen and Cross when you last saw him?

A. I don't believe he was. He may have been. I am not certain.

Q. You are not certain?

A. No.

Q. Now, as a matter of fact, Leavitt is west of Hoyne, isn't it, sir?

322 A. I believe it is, yes.

Q. And Damen is east of Hoyne, is that not correct?

A. That is right.

Q. Now, did you see Maroy walk east on Madison Street?

A. I believe he did, but I cannot be real positive, but I think he did. I think he walked east. I think he walked east and went into a building, if I am not mistaken.

Q. On what side of the street did he walk east?

A. I think he was on the south side when he walked east. My memory is not that good. I cannot remember exactly which side he was on or which way he walked, but I think it was east.

Q. And you were in this vicinity in the performance of your duties as a Treasury agent, were you not, sir?

A. Yes, sir.

Q. Did you make written notations of what you had observed at that time?

A. Not at that time. I did later that day.

Q. Not at that time?

A. Not at that time.

Q. Now, you say the automobile bumped into your car, or into the car in which you were sitting at the time you were parked on Leavitt?

A. That is right.

Q. What kind of a car was it?

323 A. I think it was a 1949—I am not sure about the year, but it was a green Plymouth sedan.

Q. Was it the same car that you had seen Maroy and Minor get out of earlier that afternoon?

A. No, it was not.

Q. Do you know the license number of this automobile that you saw?

A. Yes, I do.

Q. What is the license number?

A. 1941999.

Q. 1956 Illinois?

A. 1956 Illinois.

Q. Do you know in whose name that license is registered?

A. Yes, I do.

Q. In whose name is it registered?

A. Charles West, I believe, Charles West, Jr.

Q. Charles West, Jr.?

A. Yes.

Q. When was the last time you saw the 1956 Pontiac out of which you saw Minor and Maroy get after they got out of the car, after they got out of the Pontiac?

A. I think it was still there when I left the scene.

Q. It was still standing there?

A. Yes.

Q. Approximately how long was it from the time
324 when you first saw the Pontiac before you left the scene.

A. Oh, a matter minutes, less than five minutes.

Q. When you say you left the scene, are you referring to when you left off of Madison Street between Damen and Hoyne?

A. Yes.

Q. When you were at Leavitt, on Leavitt just north of Madison, did you see the 1956 Pontiac?

A. No.

Q. Am I to understand you, sir, that the last time you saw the 1956 Pontiac was a few minutes after you pulled off of Hoyne and went east on Madison Street, and when you left that parking place about 30 feet east of Hoyne was the last time you saw the 1956 Pontiac on that day?

A. I think that is right.

Q. Did you see anyone drive the Pontiac away?

A. No.

Q. Did you see Maroy reenter the Pontiac?

A. No.

Q. Did you see Minor enter the Pontiac after he had gotten out?

A. I don't think so. I was watching the Pontiac.

Q. At the time you were watching Minor and Gjertsen and Cross, is that right?

A. I left them at Leavitt, that is right.

325 Q. Now, when you first saw Minor and Maroy on the 6th of July, 1956, I believe you said the first one you saw was Minor, is that correct?

A. I believe that is right.

Q. Where was Minor when you saw him?

A. I think he was in an apartment. I am pretty sure he was in an apartment on West Washington, in the 3200 block on West Washington.

Q. Was Minor there when you first arrived there?

A. No, he was not.

Q. You went there and later Minor came in?

A. I went there looking for Maroy.

Q. Just answer my question. You were there and later Minor came in?

A. He was brought in. He didn't come in.

Q. All right. Now, with whom was he when he came in or when he was brought in?

A. Mr. Gjertsen and some other agents.

Q. Was there anyone else with him?

A. No, I believe he was alone except for the police and our agents.

Q. How long was it after Minor was brought in was it before Maroy was brought in?

A. Oh, I would say 20, maybe 30 minutes.

Q. Do you know where Minor was when he was arrested?

32c A. No, I do not.

Q. Do you know where Maroy was when he was arrested?

A. Excuse me. I do know when Minor was arrested. I think he was arrested in his room at the Charles Hotel.

Q. Do you know where Maroy was when he was arrested?

A. No, sir, I do not.

Q. Who brought Maroy in?

A. I believe Gjertsen did. He brought Minor in first, and I took care of Minor myself, myself and another man, then Gjertsen went out and brought back—

Q. Brought back Maroy?

A. I believe he did.

Q. Is that right?

A. Yes.

Q. And you and Gjertsen then conducted a search of Minor and Maroy?

A. That is right.

Q. And on their persons, you told the Court and jury you found some keys?

A. That is right.

Q. You then took these keys that you got from Maroy, one of them, and you tried it in the 1956 Pontiac, is that correct?

A. Yes, sir.

Q. Where was the Pontiac at the time you tried
327 the keys in it?

A. I think it was sitting back at—one block east of Wood Street, and it was in the vicinity of the apartment at 111 North Wood.

Q. You took a key that you took from the person of Minor and tried that key in the 1956 Pontiac?

A. That is right.

Q. And the key that you took from Minor fitted the Pontiac, did it not, sir?

A. That is right.

Q. And the key that you took from Maroy fitted the Pontiac, is that right?

A. That is right.

Q. You also took a key from Maroy and you tried it in the apartment; was it 1201 111 North Wood Street, sir?

A. That is right.

Q. And the key you took from Maroy, you tried it in Apartment 1201, 111 North Wood Street, fitted the door, did it not?

A. Yes, sir.

Q. You took a key from Edward Minor and tried it in the door of Apartment 1201, 111 North Wood Street, did you not, sir?

A. Yes, sir.

Q. And the key which you took from Minor, which
328 you tried in Apartment 1201, 111 North Wood Street, fitted the door, did it not, sir?

A. Yes, sir.

Q. Did you search the apartment at 111 North Wood?

A. Yes.

Q. Did you find any narcotics in 111 North Wood?

A. No.

Q. Did you search the 1956 Pontiac?

A. Yes.

Q. Did you find any narcotics in the 1956 Pontiac?

A. No.

Q. You don't know what other doors, if any, the key that you took from Minor fit, do you, sir?

A. No, I don't.

Q. You don't know what other door, if any, the key you took from Maroy fit, do you, sir?

A. No, sir.

Q. When you were trying these keys in Apartment 1201, 111 North Wood, you at that time expected to testify about it before the jury, or on the trial of the case, did you not, sir?

Mr. Grady: I object to what he expected to do.

The Court: I will sustain the objection.

329 By Mr. Pincham:

Q. Well, when you tried the keys in Apartment 1201, 111 North Wood Street, were you doing that pursuant to your investigation duties in this case?

Mr. Grady: I object to that, also. That is his state of mind.

The Court: He was performing the responsibility of a narcotics agent.

The Witness: Yes, sir.

By Mr. Pincham:

Q. Is your answer yes?

A. Well, I was looking for the plant.

Q. Is your answer yes?

A. Yes.

Q. Now, after you saw that these keys fitted the door, you then returned them to the defendants?

A. Not that day, later on.

Q. Later on?

A. Yes.

Q. And you returned them to the defendant before the cause came on for trial, did you not, sir?

A. Yes, sir.

Q. Did you ever see the defendant Jessie Maroy in this
1949 Green Plymouth?

A. I cannot say. I may have. I cannot be sure.

330 Q. You are not sure?

A. I am not sure.

Mr. Pincham: That is all.

The Court: Is there any redirect?

Mr. Grady: No redirect, your Honor.

The Court: You may step down.

(Witness excused.)

The Court: Mr. Grady, do you have another witness?

Mr. Grady: We have a stipulation, your Honor. If I may read it into the record at this time.

The Court: Yes.

Mr. Grady: If the Court please, ladies and gentlemen:

"It is hereby stipulated and agreed by and between the United States of America and Jessie Maroy and Edward Minor, through their respective attorneys, that John W. Fonner, United States chemist, if called upon to testify, will testify as follows:

"That on May 14, 1956, he received from Agent Gjertsen of the Narcotics Bureau, Government's Exhibit 1 for identification, in a sealed condition; that upon breaking said seal and extracting the contents thereof, to wit, a glassene envelope, Government's Ex-
331 hibit 4, and a yellow paper, Government's Exhibit 3, he weighed and tested the contents of the glassene envelope and found that envelope to contain approximately 200 grains of heroin hydrochloride, a narcotic drug, a derivative of opium, and upon the conclusion of his examination, he replaced the contents and sealed the said glassene envelope, Government's Exhibit 4, in a large manilla envelope marked Government's Exhibit 2, and sealed said Exhibit 2.

"Further the witness Fonner will testify that Government's Exhibits 1, 3 and 4 have been in his care and custody ever since the date that said exhibits were delivered to him until they were returned to Agent Gjertsen for production in Court in this case."

This is another stipulation:

"It is hereby stipulated and agreed by and between the United States of America and Jessie Maroy and Edward Minor through their respective attorneys that John W. Fonner, United States chemist, if called upon to testify, will testify as follows:

"That on May 23, 1956, he received from Agent Gjertsen of the Narcotics Bureau, Government's Ex-
332 hibit 5 for identification, in a sealed condition, and that upon breaking said seal and extracting the contents thereof, to wit, a glassene bag or a glassene envelope, Government's Exhibit 8. He weighed and tested the contents of the glassene envelope and found said envelope to contain approximately 200 grains of heroin hydrochloride, a narcotic drug, a derivative of opium, and that upon the conclusion of his examination, he replaced the contents in, and sealed the said glassene envelope, Government's Exhibit 8, in a large manilla envelope along with Government's Exhibit 7 which had been included in Government's Exhibit 1, in a large manilla envelope marked Government's Exhibit 6, and sealed said exhibit 6.

"Further, the witness Fonner will testify that Government's Exhibits 5, 7 and 8 have been in his care and custody ever since the date the said exhibits were delivered to him till they were returned to Agent Gjertsen for production in Court in this cause."

The last one:

"It is hereby stipulated and agreed by and between
333 the United States of America and Jessie Maroy and

Edward Minor, through their respective attorneys that John W. Fonner, United States chemist, if called upon to testify, will testify as follows:

"That on July 7th, 1956, he received from Agent Gjertsen of the Narcotics Bureau, Government's Exhibit 9 for identification, in a sealed condition, and that upon breaking said seal and extracting the contents thereof, to wit, a minilla envelope, Government's Exhibit 11, he weighed and tested the contents of same and found said manilla envelope to contain approximately 305 grains of heroin hydrochloride, a narcotic drug, a derivative of opium;

"And that upon the conclusion of the examination he replaced the contents in said manilla envelope, Government's Exhibit 11, in a large manilla envelope marked Government's Exhibit 10.

"Further the witness Fonner would testify that Government's Exhibits 9 and 11 have been in his care and custody ever since the date said exhibits were delivered to him until they were returned to
334 Agent Gjertsen for production in this case."

The Court: Has counsel correctly stated the terms of your stipulation?

Mr. Pincham: Yes, he has, your Honor.

The Court: The jury is instructed that they will regard as evidence given as described in the stipulation those facts which the United States Attorney has just read.

Mr. Grady: With that, your Honor, the Government will move for the admission of Government's Exhibits 1 through 11 for identification, into evidence as Government's Exhibits 1 to 11.

The Court: Is there any objection?

Mr. Pincham: The defendant Maroy objects to each Exhibit 1 to 11, and the defendant Minor objects to the introduction in evidence of Government's Exhibits 1 through 11.

The Court: For what reason, Mr. Pincham?

Mr. Pincham: Well, if the Court would like me to state the reasons, I would prefer to do it out of the presence and hearing of the jury.

The Court: I gave you the opportunity to telling me the reasons, otherwise, I would have—did you want me to rule without my reciting the reasons. I know of no rule that says that objections should be stated out of the presence of the jury.

Mr. Pincham: Well, Judge, I have objections to 335 them and I have reasons for them.

The Court: There is no obligation on your part to give your reason. I might be impressed with them. If you would rather have me rule without giving your reasons, I am quite willing to do it.

Mr. Pincham: That is up to the Court. I feel despite that circumstance it would not be proper, so I am asking the Court to permit—

The Court: All right. Over the objection of the defendants, the Court will receive into evidence Government's Exhibits 1 to and including 11 respectively, for identification, as Government's Exhibits bearing the numbers indicated.

(Said documents, so offered and received in evidence, were marked Government's Exhibits 1 through 11.)

Mr. Grady: Your Honor, with that the Government will rest.

The Court: Ladies and gentlemen, we will excuse you now until two o'clock.

(Thereupon, at 12:30 p. m., a recess was taken until 2:00 p. m. of the same day, January 4, 1957.)

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IN THE UNITED STATES DISTRICT COURT
* * (Caption—) * *

Before Judge Hoffman and a Jury,
January 4, 1957,
2:00 o'clock, p. m.

The hearing resumed pursuant to recess.

Appearances:
(Same as before.)

The Court: Mr. Pincham, do you have a motion?

Mr. Pincham: Yes, I have several motions, one of which, if your Honor please, is to move the Court to strike the testimony of Agent Turnbou relating to the conversation that he had over the telephone with the defendant Edward Minor and instruct the jury to disregard that testimony. That is the phone conversation, I believe, of July 5, 1956. That is as to the defendant Maroy.

As to the defendant Maroy, we also have a motion,
337 if your Honor please, to move the Court to strike the testimony of Agent Turnbou relating to events, circumstances and facts and matters and things which transpired about which he testified concerning July 5, 1956, and that motion is made as to the defendant Maroy.

We also move the Court, as to the defendant Maroy, to strike the testimony of Turnbou, Gjertsen, Spillane and Cross, and each of them, as to the testimony which they related certain matters, facts and things that occurred about which they testified on May 22, 1956.

(Argument on above motions, not transcribed.)

The Court: I will deny your motions. Now, Mr. Pincham, you may make whatever other motions you like.

Mr. Pincham: Well, if the Court please, at this time I move the Court to enter a judgment of acquittal, of

Jessie Maroy, as to Count 1 of the indictment, and move the Court to enter a judgment of acquittal of Jessie Maroy as to Count 2 of the indictment.

(Argument on above motions not transcribed.)

The Court: Now, what is your motion precisely now, Mr. Pincham. Does it deal with all counts, and in whose behalf do you make it?

Mr. Pincham: My motion is that the Court—

The Court: You don't have a written motion?

338 Mr. Pincham: Do you care for me to write it, Judge?

The Court: No, I don't insist. It is not required under the law. It is always better to have them, but since you do not have them, I cannot look at them, but you can state your motions precisely so that you may have an adequate ruling in the record. We have moved on the matter of striking the testimony. I mean you are making a motion here for judgment of acquittal, in whose behalf and with respect to which counts.

Mr. Pincham: I am making a motion for Judgment of acquittal in behalf of the defendant Jessie Maroy as to Count 1.

I am making a motion for judgment of acquittal for Jessie Maroy as to Count 2.

I am making a motion for judgment of acquittal as to the defendant Jessie Maroy and Edward Minor as to Count 12.

The Court: Mr. Clerk, the motion of the defendant Maroy made at the close of the Government's evidence for judgment of acquittal as to Counts 1, 2 and 12, of the indictment, are denied.

The motion of the defendant Minor made at the close of the Government's evidence with respect to Count 12 of the indictment will be denied.

Have I disposed of the motions?

339 Mr. Pincham: Yes.

The Court: And now if you will bring in the jury, Mr. Marshal, and Mr. Pincham, will you call your first witness, please.

Thereupon, the Defendants, to Maintain the Issues in Their Behalf, Introduced the Following Evidence, to Wit:

JESSIE MAROY, one of the defendants herein, called as a witness in his own behalf, having been first duly sworn, testified as follows:

Direct Examination by Mr. Pincham.

Q. Will you keep your voice up, please, so that the last ladies at this end of the jury box can hear you?

A. Yes, I will.

Q. What is your name, please.

A. Jessie Maroy.

Q. Where do you live?

A. 3251 West Washington.

Q. That is in Chicago?

A. Yes, sir, it is.

Q. How long have you lived at that address?

A. About two years.

340 Q. Prior to that where did you live?

A. 3451 West Douglas Boulevard.

Q. By the way, how old a man are you?

A. Forty-one.

Q. What is your business, profession or occupation?

A. I am a partnership tavern owner.

Q. Where is the tavern located?

A. 1612 South Kedzie.

Q. How long have you been engaged as a partner in the tavern at 1612 South Kedzie?

A. About ten months.

Q. Prior to your becoming engaged in the tavern business at 1612 South Kedzie, what was your business, profession or occupation?

A. Tavern.

Q. Where was your tavern located?

A. 114 South Paulina.

Q. How long were you engaged in the tavern business at 114 South Paulina?

A. About three years and a half.

Q. Prior to your becoming engaged in the tavern business at 114 South Paulina, what was your business, profession or occupation?

A. I was working at Woodall Industries.

341 Q. Where is that located?

A. 3500 on Oakton in Skokie, Illinois.

Q. What was your duty there?

A. I was masonite inspector.

Q. How long were you so employed?

A. Three years.

Q. Prior to that, what was your business, profession or occupation?

A. Well, I had a truck. I was doing different trucking jobs and junking for myself.

Q. Now, will you tell the jury approximately what month it was you became engaged in the tavern business at 1612 South Kedzine?

A. I would say it must have been about March.

Q. Of 1956?

A. 1956.

Q. Can you tell the Court and jury approximately when it was that you went out of the business, the tavern business at 114 South Paulina?

A. Around the first of the year. It was just a matter of a few weeks.

Q. Did you go out of the business at 114 South Paulina

and then go into the business at, the tavern business at 1612 South Kedzie?

A. Yes, sir, I did.

342 Q. By the way, have you ever been convicted of any crime?

A. No, I have not.

Q. Do you know one Tom Cross?

A. Yes, I saw him.

Q. Do you recall approximately when it was that you first saw him?

A. It must have been about a year ago.

Q. Where was he when you saw him about a year ago?

A. He was in the tavern.

Q. In what tavern was he?

A. 114 South Paulina.

Q. When you saw him in the tavern at 114 South Paulina, were you then the owner of that tavern?

A. Yes, sir, I was.

Q. Was it day or night when you saw him?

A. It was day.

Q. Did anything unusual occur when you saw Tom Cross in the tavern at that time?

Mr. Grady: I would object to the question, your Honor. I think it goes considerably beyond the period of the indictment. For that reason, I don't see its materiality.

The Court: What is the date, Mr. Grady?

Mr. Grady: May 10th, 1956, is the date in the indictment, and this was about a year ago, which would

343 mean January 1956.

Mr. Pincham: I propose to show by this witness—

The Court: I will let him answer. You may answer. Do you know what the question is?

The Witness: No, I don't.

By Mr. Pincham:

Q. The question was, Mr. Maroy, did anything unusual occur in the tavern at 114 South Paulina when you first saw Tom Cross there?

A. Yes, it did.

Q. Will you tell the Court and jury in your own words what, if anything, unusual did occur at that time and place.

A. He was using violent words, and I had to put him out of the tavern.

Q. When you say "he", who do you mean?

A. Tommy. I only know him by Tommy.

Q. Did you later see him?

Mr. Grady: I am objecting to the last answer, "using violent words."

By Mr. Pincham:

Q. Was the language he was using violent or profane?

A. Yes, it was.

Q. What it too violent and profane to spread of record in this Court?

344 A. Yes, it was.

The Court: I will let the witness' answer stand.

By Mr. Pincham:

Q. Did you again see Tom Cross in your tavern at 114 South Paulina?

A. Yes, I did.

Q. How long was it after the first time when you saw him the second time?

A. About three weeks later.

Q. What it day or night when you saw him?

A. It was day.

Q. Did anything unusual occur in the tavern at 114 South Paulina the second time you saw Tom Cross there?

A. Yes, I put him out.

Q. And prior to your putting him out, what did you see Cross do?

A. I had taken a weapon from him and put him out.

Q. What kind of weapon did you take from him?

A. It was a knife.

Q. Did you see him with the knife?

A. Yes, I did.

Q. And did you him him say anything at the time you saw Cross with the knife?

A. He was using some words?

345 Mr. Grady: I object to that.

The Court: Yes, "He was using some words," that answer may go out and I direct the jury to disregard it.

By Mr. Pincham:

Q. When you saw Cross with the knife, did you hear him say anything?

A. He was using violent words.

Q. Just answer the question. Did you hear him say anything?

A. Yes, I did.

Q. Do you know to whom he was talking when you heard him say something?

A. He was a customer. I only know him when I see him.

Q. When you heard the conversation by Cross, did you at that time —

The Court: Just a minute, did he answer? What was the last question? I just want to be sure that you got an answer to your question. Read two or three questions there, please.

(Last question read.)

The Court: Do you think that is responsive? You want to know to whom he was talking.

Mr. Pincham: I think it is.

The Court: He was only a customer. You want 346 to know to whom he was talking.

Mr. Pincham: To a customer.

The Court: Oh, he was talking to a customer. Is that what you mean?

The Witness: Yes.

The Court: Is that what you mean, Mr. Witness? His words were directed towards a customer in your establishment?

The Witness: Yes.

The Court: All right.

By Mr. Pincham:

Q. When you heard him talk to this customer, was he talking in a loud or moderate voice?

A. Yes, he was.

Q. Talking in what voice, loud or moderate?

A. He was talking loud.

Q. What kind of words was he using?

Mr. Grady: I think he has already answered that.

Mr. Pincham: You objected and the Court sustained it.

The Court: No.

Mr. Grady: Violent words.

By Mr. Pincham:

Q. What did you hear Cross say?

347 The Court: My ruling was based on the fact that he said he used some words.

By Mr. Pincham:

Q. What did you hear Cross say at the time you saw him with the knife in his hand?

A. Well, the words I don't think I could use, violent words.

Q. Were the words profane?

A. Yes, they were.

Q. Too profane to spread of record in this Court?

A. Yes, they were.

Q. When he was using those words, at which time he had the knife in his hand, did you saw something to Cross?

A. I came over and took the knife from him.

Q. When you took the knife from him, what did you do then?

A. I called the cops.

Q. Did the police arrive?

A. Yes, they did.

Q. Now, was Cross still there when the police arrived?

A. No, he was not.

Q. Did you have a conversation with Cross after you called the police and before the police arrived?

A. Yes, I did.

Q. What did Cross say to you and what did you
348 say to Cross?

A. He said he won't come in again if I let him go.

Q. When he said that, what did you do?

A. I kept the knife and turned him loose.

Q. Now, do you drive an automobile?

A. Yes, I do.

Q. Do you have a license to drive?

A. Yes, I have.

Q. Is there anything physically wrong with you?

A. Well, I have trouble with my eye.

Q. Which eye.

A. My left eye.

Q. When you say you have trouble with that eye, just what do you mean?

A. I cannot see too good out of one eye.

Q. Does the inability or your not seeing too good out of your left eye interfere or have any bearing on your driving ability?

A. Yes, it does.

Q. Do you know Edward Minor?

A. Yes, I do.

349 Q. How long approximately have you known Minor?

A. About five years.

Q. Did you ever have occasion to hire Minor in any of your business establishments?

A. Yes, I have.

Q. When was the first time approximately that you hired Minor?

A. About 16 months ago.

Q. Where was he engaged in his employment for you?

A. 114 South Paulina.

Q. What were his duties at 114 South Paulina?

A. He was tending bar.

Q. Was he tending bar there at the time you went out of business at 114 South Paulina?

A. Yes, he was.

Q. Now, have you had occasion to hire the defendant Edward Minor in any other capacity?

A. Well, when I moved, I kept Edward Minor.

Q. When you moved where?

A. 1612 South Kedzie.

Q. Was Edward Minor employed by you when you were at 1612 South Kedzie?

A. Yes, sir.

Q. What were his duties at 1612 South Kedzie?

A. He was bar porter.

350 Q. By bar porter, what do you mean? What did he do?

A. He came on about two o'clock, and he opened the tavern up in the morning and put the stock out.

Mr. Grady: Open up what?

The Witness: Opened the tavern up.

By Mr. Pincham:

Q. Was he on a salary?

A. Yes, he was.

Q. How much was he paid per week?

A. Sixty dollars.

Q. What is the name of your partner in this tavern at 1612 South Kedzie?

A. Jack Woods.

Q. Where does Jack Woods live?

A. He lives at 3508 South Prairie.

Q. Do you have a bookkeeper for the tavern at 1612 South Kedzie?

A. Yes.

Q. What is the name of your bookkeeper?

A. His name is Riley.

Q. Where is his office located?

A. Is in the 3600 block west on Sixteenth Street.

Q. Did you ever have occasion to see the bookkeeper in the tavern at 1612 South Kedzie?

A. Yes, I did.

351 Q. Approximately how often have you seen the bookkeeper in this tavern at 1612 South Kedzie?

A. Once a month.

Q. Did you ever have occasion for the defendant, Edward Minor, to drive your automobile?

A. Quite a few occasions.

Q. What would be the occasion for Minor driving your automobile?

A. Well, I didn't care too much for driving myself. I don't trust myself to drive too much.

Q. Did you see the defendant Edward Minor on May 10, 1956?

A. Yes, I did.

Q. Now, do you recall where he was when you first saw him?

A. Yes, I do.

Q. Where was Minor when you first saw him on May 10th, 1956?

A. I picked him up at home.

Q. At whose home?

A. At his home.

Q. Where was he living at that time?

A. Living in a hotel in the 1900 block on Warren.

Q. When you went there, did you and Minor go some place?

A. Yes, we did.

352 Q. Where did you and Minor go?

A. In the 1000 block on Madison.

Q. In the 1000 block on Madison?

A. Yes.

Q. What is located there?

A. I went there to pick up some glasses.

Q. Who drove the automobile from 1900—what street was it?

A. On Warren.

Q. West Warren to 1000 block on West Madison?

A. Minor did the driving.

Q. Approximately what time was it you arrived at the 1000 block on West Madison?

A. It must have been between 3:30 and 4:00 o'clock.

Q. Did you later leave the 1000 block on West Madison?

A. Yes, we did.

Q. Did you leave alone or did you leave with someone?

A. Me and Minor.

Q. When you left the 1000 block on West Madison Street, where did you go?

A. We went to Hoyne and Madison.

Q. Who was driving the automobile at that time?

A. Minor was driving.

Q. Was the automobile parked?

A. Yes, it was.

353 Q. Will you tell the Court and jury where the automobile was parked?

A. On the northwest corner of Hoyne and Madison.

Q. Was the automobile facing north or facing south?

A. Facing south.

Q. Was it on Hoyne—was it north or south of Madison Street?

A. It was north of Madison.

Q. Was it on the east or west side of Hoyne?

A. The west side.

Q. When the automobile was parked, did you get out of the automobile?

A. Yes, I did.

Q. Now, I will ask you, Mr. Maroy, did you drive the automobile to the south side of Madison Street east of Hoyne and get out of your car and wave across the street to Tom Cross and Gjertsen?

A. No, sir, I didn't.

Q. I will ask you, Mr. Maroy, did you get out of the automobile parked on the south side of Madison Street east of Hoyne and then walk across Madison to the north side of Madison Street and engage in a conversation with Tom Cross and Gjertsen?

A. No, I didn't.

Q. I will ask you, Mr. Maroy, did you say to Tom
354 Cross on the north side of Madison Street east of Hoyne that, "I don't do business with Grays," or words to that effect?

A. No, sir, I did not.

Q. I will ask you, Mr. Maroy, did Tom Cross say to you, while you were standing on the north side of Madison Street east of Hoyne, "I have got my man with me. He wants to set me up," or words to that effect?

A. No, he didn't.

Q. I will ask you, Mr. Maroy, did Tom Cross say to you that the man was all right, or words to that effect, and that he didn't have any money, but this man, re-

ferring to Gjertsen, could set him up if you would sell him a piece, or words to that effect?

A. No, he did not.

Q. Now, when you got out of the car at Madison and Hoyne, on what street were you immediately after you out of the car?

A. I went across—

Q. No, immediately when you got out of the car, on what side of the street were you?

A. I got out on the west side.

Q. On the west side of what street?

A. Of Hoyne.

Q. Did you get out of the automobile on the south
355 side of Madison Street east of Hoyne and go into a building on the south side of Madison Street?

A. No, I didn't.

Q. I will ask you, Mr. Maroy, did you become engaged in a conversation in the presence of Minor and Gjertsen and Cross, and leave them standing on the north side of Madison Street and proceed back across the street and get in an automobile parked on the south side of Madison Street east of Hoyne?

A. No, I didn't.

Q. Now, when you got out of the car, did you see Tommy Cross?

A. Yes, I did.

Q. Did you wave at Tommy Cross?

A. No, I didn't.

Q. When you saw Tommy Cross, did Tommy Cross say anything to you?

A. Yes, he did.

Q. What did he say to you?

A. He said, "I want to talk with you."

Q. When Tommy Cross said, "I want to talk to you," on what street were you at that time?

A. I was west of Hoyne. I was on Hoyne.

Q. On what side of the street, on the west side of the street?

356 A. Yes.

Q. Where was Tommy Cross when he said, "I want to talk to you"?

A. He was coming across. He met me coming across from the east side.

Q. From the east side of Hoyne?

A. That is right.

Q. When he said, "Hey, I want to talk to you," did you see Gjertsen?

A. No, I didn't.

Q. Did you at any time on May 10, 1956, shake hands with Gjertsen?

A. No, I haven't.

Q. When Tommy Cross said, "Hey, I want to talk to you," approaching you from the east side of Hoyne Street, what did you say?

A. "You know you cannot talk with me."

Q. When you said, "You know you cannot talk with me," did you recognize Tommy Cross as being the same individual that you put out of your tavern at 114 South Paulina Street?

A. Yes, I did.

Q. When you said, "You cannot talk to me," or words to that effect, what did Tommy Cross say?

357 A. He didn't say any more.

Q. When you said, "You cannot talk to me," or words to that effect, did you see Gjertsen?

A. No, I didn't.

Q. And after you made the statement that you have told the Court and jury you made, did you go some place?

A. Yes, I did.

Q. Where did you go?

A. I walked to Damen.

Q. Where on Damen did you walk?

A. In a tavern on the corner.

Q. In a tavern on the corner of what street?

A. On the northwest corner.

Q. Did you walk down Madison Street on the south side of the street?

A. On the north side of the street.

Q. Did you walk down on the south side?

A. On the north side of the street.

Q. Just answer yes or no?

A. No, I didn't.

Q. Did you walk on the south side of the street?

A. No, I didn't.

Q. Did you walk east on Madison from Hoyne to Damen?

A. Yes, I did.

Q. Now, on what side of the street were you when 358 you walked east on Madison from Hoyne to Damen?

A. On the north side.

Q. Did you walk from Hoyne to Madison alone or were you with somebody?

A. I was alone.

Q. Did you say anything other than what you have told the Court and jury to Cross on that day?

A. No, I didn't.

Q. Did you say anything at all to Gjertsen on that day?

A. No, I didn't.

Q. Now, when you went to Damen and Madison, you told the Court and jury you went into a tavern, is that correct?

A. That is correct.

Q. Now, did you see anyone in the tavern that you knew?

A. Yes, I did.

Q. Who did you see that you knew?

A. A fellow by the name of Jack Flag.

Q. Now, since Minor has been employed by you and your partner, have you ever given Minor permission to drive your automobile?

A. Yes, I have.

Q. Have you given him permission to drive your automobile when you were not in the car?

A. Yes, I have.

Q. What would be the occasion for Minor driving 359 your automobile?

A. Well, he goes and picks up stock, and picks up change up and takes it to the tavern.

Q. About how often would he do that?

A. Sometimes usually every day.

Q. Now, did you later leave the tavern at Damen and Madison?

A. Yes, I did.

Q. Where did you go when you left the tavern?

A. I went back and picked my car up.

Q. When you went back and picked your car up, where did you go then?

A. I went to work.

Q. Where your your car parked when you left the tavern at Damen and Madison?

A. Where I left it at?

Q. Where was that?

A. On the northwest corner of Hoyne and Madison.

Q. Did you at any time park your car, or was your car at any time on May 10th, 1956, parked on the south side of Madison Street east of Hoyne?

A. No, it was not.

Q. Now, after you proceeded to Damen and Madison, did you observe where Minor went?

A. No, I did not.

360 Q. Did you see what Minor was doing?

A. No, sir, I did not.

Q. Did you know what Minor was doing?

A. No, I did not.

Q. Now, when was the next time you saw Tommy Cross after May 10th, 1956?

A. The day we came to Court.

Q. That was the 2nd of January, 1957?

A. Yes, it was.

Q. Did you see Tommy Cross on the northwest corner of Hoyne and Madison on the evening of May 22nd, 1956?

A. No, sir, I did not.

Q. Did you engage in conversation with Tommy Cross on the northwest corner of Hoyne and Madison on May 22nd, 1956?

A. No, I did not.

Q. Now, when was the first time you ever saw him to know him, Gjertsen?

A. Then?

Q. Yes.

A. The day I was arrested?

Q. Had you ever, up to the date you were arrested, had a conversation with Gjertsen?

A. No, I haven't.

Q You were arrested on what date?

361 A. July 6.

Q. 1956?

A. 1956.

Q. Did you have occasion to see Edward Minor on July 5, 1956?

A. Yes, I did.

Q. Do you know approximately what time it was that you saw him on July 5, 1956?

A. It must have been about 8:30, between 8:30 and 9:00 o'clock.

Q. Do you know where 111 North Wood Street in located?

A. Yes, I do.

Q. Do you know any person who lives or resides in the building at 111 North Wood?

A. Yes, I do.

Q. Do you know who resides in the building at 111 North Wood?

A. My sister lives there.

Q. What is the name of your sister at 111 North Wood?

A. Mary.

Q. What is her last name?

A. Smith.

Q. Did you have occasion to be in the apartment of your sister on the evening of May 5, 1956?

A. Yes, I did.

362 Q. And did you see the defendant—

Mr. Grady: Excuse me. Just a minute. I think he means July 5th.

By Mr. Pincham:

Q. Did you have occasion to be in this apartment, 111 North Wood, on July 5th, 1956?

A. Yes, I did.

Q. Did you see the defendant Edward Minor there?

A. He was there also.

Q. And did you later leave 111 North Wood?

A. Yes.

Q. When you left 111 North Wood, did you leave alone or with someone?

A. He was with me.

Q. Did you leave in an automobile or did you walk?

A. I left in an automobile.

Q. What kind of automobile did you leave in?

A. 1956 Chevrolet.

Q. Who was the owner of that automobile?

A. A girl named Lydia Rogers.

Q. When you left in the 1956 Chevrolet, did you have any knowledge with whom Minor had been talking prior to your leaving 111 Wood?

A. No, I did not.

Q. When you left in this Chevrolet, did you have 363 any knowledge of Minor ever having talked to Turnbou?

A. No, I did not.

Q. And when you left in this Chevrolet, did you have any knowledge of Minor ever having talked to Cross?

A. No, sir, I didn't.

Q. When you left in this Chevrolet, did you have any knowledge of Minor ever having talked to Gjertsen?

A. No, sir, I didn't.

Q. When you left, where did you go?

A. I went to work.

Q. Did Minor go in the car with you?

A. Yes, he did.

Q. Did Minor go to work with you?

A. No, he didn't.

Q. Did Minor get out of the car?

A. Yes, he did.

Q. Where did Minor get out of the car?

A. On Hoyne and Madison.

Q. When he got out of the car at Hoyne and Madison, where did you go?

A. I went to work.

Q. Did you have any knowledge with whom, if anyone, Minor spoke or talked with after he got out of the car?

A. No, I never came back.

Q. Do you have any knowledge of Minor giving any

364 package to anybody?

A. No, I don't.

Q. Do you have any knowledge of Minor receiving any money from anybody?

A. No, I do not.

Q. Do you have any knowledge of Minor receiving or having a conversation with Mr. Turnbou on July 5, 1956?

A. No, I do not.

Q. Do you have any knowledge of Minor having seen Turnbou on July 5th, 1956?

A. No, I do not.

Q. Do you have any knowledge of the matters and things about which the witnesses here for the Government have testified to concerning the transfer of money to Minor and packages from Minor to Turnbou, Cross or Gjertsen?

A. No, I do not.

Q. Now, about what time was it on July 6 you were arrested?

A. About 1:30 or 2:00 o'clock.

Q. Where were you at the time of your arrest?

A. I was on Kedzie and Madison.

Q. By whom were you arrested?

A. The officer he[illegible]

Q. You are indicating Officer Gjertsen?

A. Yes.

365 Q. Is that the first time you had ever seen Gjertsen to know him?

A. That is the first time.

Q. And when he arrested you, what did he say to you?

A. He asked me my name.

Q. When he asked you your name, what did you tell him?

A. I told him Jessie Maroy.

Q. When you told him Jessie Maroy, what did he say?

A. He put the handcuffs on me and said I was under arrest.

Q. What did you say when he did that?

A. I said, for what?

Q. What did Gjertsen say when you asked him for what?

A. He said, "Come on, you will find out."

Q. Did he take you some place?

A. Yes, he did.

Q. At the time of your arrest, did you know where the defendant, Edward Minor, was?

A. No. I did not.

Q. Where did Gjertsen take you?

A. He took me home.

Q. Where was that?

A. 3251 Washington.

Q. When you arrived at 3251 Washington, did you have a conversation with Gjertsen at that place?

366 A. Yes, I did.

Q. What did Gjertsen say to you and what did you say to him?

A. He asked me how much money I had.

Q. When he asked you that, what did you say?

A. I took my money out.

Q. Did you say anything to him?

A. Yes, I asked him why he wanted to know.

Q. When you took your money out, how much money did you take out?

A. There was thirty-some dollars. I am not too sure.

Q. When you took the money out, what did you do with it.

A. He looked through the money.

Q. When you say "he," are you referring to Gjertsen?

A. Yes, Officer Gjertsen.

Q. When he took the money, or when he looked at the money, after he looked at the money, what did he do with it?

A. He gave it back to me.

Q. And after he gave it back to you, did he say anything to you at that time?

A. Yes, he did.

Q. What did he say?

A. He said, "Do you want to give me what you have here?"

367 Q. When he said that, what did you say?

A. I said, "I don't know what you are looking for."

Q. What did he say to you at that time?

A. He said, "Well, we have to search.

Q. And did he search?

A. Yes, he did.

Q. Do you know whether or not he found anything?

A. No, he did not.

Q. After he searched did you have a conversation with him?

A. Yes, I did.

Q. After the search, what did he say to you and what did you say to him?

A. He asked me, he said, "Do you want to give me whatever you have in your possession."

Q. What did you say?

A. I said, "I don't have anything. I don't know what I am arrested for."

Q. When you said that, what did he say?

A. He said, "Well, we don't have any case on you, but we will make one."

Q. Did they later take you some place?

A. Yes, they did.

Q. Did they bring you down to the new Post Office Building?

368 A. Yes, they did.

Q. And when you arrived down at the new Post Office Building, were you taken in an office?

A. Yes.

Q. Were you questioned when you were in the office?

A. No more than fingerprints and the usual thing.

Q. Now, Mr. Maroy, you are charged in Count 1 of this indictment with having, on May 10th, 1956, at Chicago, Illinois, having unlawfully purchased from persons unknown a narcotic drug which was not then and there in or a part of the original stamped package. Did you do that?

A. No, I did not.

Q. You are charged in Count 2 of this indictment of having, on May 10, 1956, at Chicago, Illinois, raudulently and knowingly received narcotics or narcotics drugs knowing that it had been imported contrary to law. Did you do that?

A. No, sir.

Q. You are charged in Count 12 with having conspired with Edward Minor to violate—you are charged in Count 12 of the indictment with having, on May 10, 1956, and July 5, 1956, conspired and agreed with Edward Minor to commit certain offenses against the United States of America. Did you do that?

A. No, sir, I did not.

369 Q. Did you know anything about the activities of Edward Minor which were done out of your presence and hearing?

A. No, I did not.

Mr. Pincham: You may inquire.

Cross Examination by Mr. Grady.

Q. Mr. Maroy, on May 10 of this year, you just testified that you didn't see Agent Gjertsen on that day?

A. No, sir, I didn't.

Q. You were in the vicinity of Hoyne and Madison and you did see Tom Cross?

A. Yes, I did.

Q. About how long were you with Tom Cross; just as long as it took to say he wanted to talk to you or you to say, "I won't talk to you," is that it?

A. That is correct.

Q. So that you just probably passed on the street, is that right?

A. We passed.

Q. And there was probably no hesitation?

A. No, there was not.

Q. So that you were never actually standing on the street with Cross at that time, is that correct?

A. I was not.

370 Q. Of course, you were never standing on the street with Agent Gjertsen, is that correct?

A. That is correct.

Q. And you never were on occasion on that day standing in a group of four, which included yourself, Edward Minor, Cross and Gjertsen, is that correct?

A. That is correct.

Q. Cross didn't say anything to you about doing business in the purchase of narcotics on that day, is that right?

A. That is correct.

Q. You didn't shake hands with Gjertsen?

A. That gentleman there?

Q. Yes.

A. No, I did not.

Q. And Gjertsen, of course, since you did not talk to him, he didn't say anything about buying narcotics on that day?

A. No, he did not.

Q. And the first time you saw Gjertsen was on July 6, is that right?

A. That is the day I was arrested.

Q. And you didn't see Thomas Cross again after that brief occasion on the 10th of May, you didn't see him again until yesterday, is that correct?

371 A. Until I came in Court yesterday or the day before, one.

Q. When he testified here?

A. That is right.

Q. So you did not see him on the 22nd day of May, is that correct?

A. That is correct.

Q. Referring to July 5, you testified you went to the premises on 111 North Wood Street with Edward Minor, is that correct?

A. That is correct.

Q. And you went over there to visit your sister?

A. That is correct.

Q. What is your sister's name?

A. Her name is Mary.

Q. Mary?

A. Mary Smith.

Q. Mary Smith?

A. Right.

Q. Is she married?

Mr. Pincham: I object as immaterial.

The Court: I will let him answer. Is she married?

The Witness: Yes, she is.

The Court: Living with her husband?

372 The Witness: No, she is not.

By Mr. Grady:

Q. About what time did you get there, Mr. Maroy, do you remember?

A. I don't know, some time, eight or nine o'clock, something like that.

Q. Then you left there with Edward Minor, is that right?

A. That is correct.

Q. And you didn't see Agent Turnbou on that day?

A. No, sir, I did not. I didn't stop. I stopped once between there and work.

Q. Now, you testified about your arrest on July 6. That was the first time you saw Agent Gjertsen, is that correct?

A. That is correct.

Q. And you said that Agent Gjertsen took some money from you, is that right?

A. No, he did not.

Q. I beg your pardon?

A. No, he didn't take any from me.

Q. He said he wanted to see how much you had there?

A. Yes, he asked me how much money I had.

Q. Then what was it you said?

A. I showed him. I took my money out of my pocket.

Q. Then what did you say after that?

A. I put it back in my pocket.

373 Q. You put it back in your pocket?

A. He told me to put it back in my pocket.

Q. And then what did he say after that?

A. He asked me if I wanted to give him what was there, or he would search the apartment.

Q. Did you want to give him what was there, and for what?

A. Was there anything there—anyway, he said, "Do you want to give me whatever is here or will I have to search the place?"

Q. Did he indicate to you what he was referring to?

A. No, sir, he didn't.

Q. When he said, "Do you want to give me something"?

A. No, he didn't.

Q. He did not indicate that to you?

A. No, he didn't.

Q. What is the room number on 111 North Wood?
A. 1208.
Q. Do you know who lives in 1201?
A. Yes.
Q. Who?
A. Lydia Rogers.
Q. That is the same lady whose car you drove that night?
A. Yes, sir.
Q. Who is she?
374 A. She is a friend of mine.
Q. A friend of yours?
A. Yes.
Q. Did you ever go to her apartment?
A. To her apartment?
Q. You had a key to that apartment, isn't that correct?
A. No, I didn't.
Q. Did you have a key to the apartment 1201 at 111 North Wood when you were arrested?
A. No, I didn't.
Q. Do you remember the keys taken from you when you were arrested?
A. Yes.
Q. But there was no key on that ring for Apartment 1201, 111 North Wood?
A. No, there was not.
Q. Did you have a key to the 1956 Pontiac when you were arrested?
A. Yes, I did.
Q. Do you remember whether that was taken from you at the time?
A. Yes, it was.
Q. Do you know whether Edward Minor had a key to Apartment 1201, 111 North Wood?
A. No, I don't know.

375 Q. You were in your sister's apartment at the time you were in 111 North Wood on the 5th of July?

A. Yes.

Q. Did you go down to Lydia Rogers' apartment at all?

A. I cannot recall. I could have stepped in there some time that night. I don't remember.

Q. How did you get the key for her car?

A. For her car?

Q. That is right.

A. I had a key to her car.

Q. You had a key to her car?

A. Yes.

Q. Where did you get that key?

A. She gave it to me.

Q. Did you just use her car whenever you wanted to, is that it?

A. Yes, I could use it when I wanted to.

Q. Why did you use her car instead of your own?

Mr. Pincham: Objection, if your Honor please.

The Court: I will let him answer. You may answer.

By the Witness:

A. I didn't prefer to use her car other than mine, but I did have the privilege to use it if I wanted to.

376 By Mr. Grady:

Q. Isn't it true that your car was parked right across the street in the parking lot?

A. I don't know.

The Court: What is your answer?

The Witness: I said I am not too sure. Yes, I think it was there.

By Mr. Grady:

Q. Your 1956 Pontiac was right across the street?

A. Yes.

Q. But you said you used Lydia Rogers' car?

A. Yes.

Q. You don't drive, do you?
A. Yes, I drive.
Q. Did you drive that night?
A. Yes, I did.
Q. Edward Minor was with you?
A. Yes, he was.
Q. You don't care much about driving, though, do you?
A. No, I don't.
Q. Why did you drive on that night instead of Edward Minor?
A. He asked me to drop him off.
Q. He asked you to drop him off?
A. Yes, he did.
377 Q. Where did you drop him off?
A. On Hoyne and Madison.
Q. And you didn't see Turnbou around?
A. No, I didn't.
Q. Where did you go after you left Hoyne and Madison?
A. I went to work.
Q. You went to work?
A. Yes, sir.
Q. There at the tavern?
A. 1612 South Kedzie.

The Court: Mr. Grady, we will take a brief recess at this time.

(Recess taken.)

The Court: Will you continue with your cross examination, Mr. Grady, please.

Mr. Grady: No further questions.

The Court: Any redirect?

Mr. Pincham: No redirect.

The Court: You may step down.

(Witness excused.)

The Court: Call your next witness.

Mr. Pincham: The defendant Jessie Maroy rests, and the defendant Edward Minor rests, your Honor.

(Thereupon the defendants rested their case.)

378 The Court: Any rebuttal?

Mr. Grady: Mr. Gjertsen.

Thereupon, the Government, to Further Maintain the Issues in Its Behalf, Offered the Following Evidence in Rebuttal:

JOHN A. GJERTSEN, called as a witness on behalf of the Government in rebuttal, having been previously sworn, testified further as follows:

Direct Examination by Mr. Grady.

Q. You are the same Mr. Gjertsen who testified earlier?

A. Yes, I am.

Q. Mr. Gjertsen, referring to July 6, 1956, that is the date you arrested Jessie Maroy?

A. Yes, sir.

Q. Now, referring to the investigation or referring to the transactions that have been testified to during the course of this trial, were you in charge of the scientifics of the narcotics division who participated in this investigation?

A. Yes, I was the senior agent.

Q. Will you state whether or not you had anything to do in an official capacity with the money which was used by the Narcotics Agents in this case to purchase heroin?

379 A. Yes.

Mr. Pincham: I object to the form of the question.

The Court: I will let him answer.

By the Witness:

A. Yes, I furnished all the money used to purchase evidence in this case.

Q. To whom did you furnish the money?

Mr. Pincham: I object. That is improper rebuttal.

Mr. Grady: I will connect this up, your Honor. I will state that to the Court.

The Court: I will let him answer.

By Mr. Grady:

Q. To whom did you furnish the money?

A. I furnished the money to special employee Thomas Cross, and to Agent William Turnbou, narcotics agent.

Q. Did you do anything to that money prior to the time you furnished it to them?

A. Yes, I processed it, tested it with phosphorescent powder, and listed all serial numbers.

Q. When you arrested Jessie Maroy on July 6, did you take any money from his person?

A. Yes, I requested that he give me all money—

380 Q. Just answer yes or no.

A. Yes, sir.

Q. What, if anything, did you do with that money after you received it from him?

A. I processed it with a blue light, checked the serial numbers, and returned it to Jessie Maroy.

Q. Did you find any of the same serial numbers—excuse me. Let me rephrase the question. Were the serial numbers on any of the bills in Jessie Maroy's possession at this time the same as any of the serial numbers of the bills you had given to Agent Turnbou or to Thomas Cross?

A. No, they were not.

Mr. Grady: No further questions.

Mr. Pincham: No cross.

The Court: You may step down.

(Witness excused.)

The Court: Does the Government rest?

Mr. Grady: The Government rests.

Thereupon, the Government rested its case in rebuttal.

The Court: I will have to excuse you for a few minutes, ladies and gentlemen.

(The following proceedings were had out of the presence and hearing of the jury.)

381 Mr. Pincham: Judge, at this time, at the conclusion of all the evidence, I again renew my motion that the Court enter a judgment of acquittal to Jessie Maroy as to Count 1.

I renew my motion that the Court enter judgment of acquittal as to Jessie Maroy, as to Count 2.

And I renew my motion that the Court enter judgment of acquittal as to Jessie Maroy, as to Count 12, and that the Court enter judgment of acquittal as to the defendant Edward Minor as to Count 12.

The Court: You have no motion with respect to the defendant Minor relating to Counts 1 and 2?

Mr. Pincham: No.

The Court: I take it you make the same argument you made at the close of the Government's case?

Mr. Pincham: Yes.

The Court: Mr. Clerk, the motion of the defendant Maroy at the close of all of the evidence for a judgment of acquittal with respect to Counts 1, 2, and 12 of the indictment, will be denied.

The motion of the defendant Minor made at the close of all the evidence for a judgment of acquittal with respect to Count 12, will be denied.

Bring in the jury.

382 (The following proceedings were had in the presence and hearing of the jury.)

The Court: Ladies and gentlemen, I had hoped that we would be able to conclude this trial tonight, or this afternoon, rather, and let the lawyers make their final arguments, and the Court charge you, but there are cer-

tain responsibilities we have to discharge out of your presence, and we have not been able to complete the work, which means regretfully I am going to have to ask you to return Monday. I hope it does not inconvenience you too much. I know this is your last day of your service here.

We will recess now until ten o'clock Monday morning.

(Thereupon, at 4:30 p. m., an adjournment was taken until Monday, January 7, 1957, at ten o'clock a. m.)

383

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

Before Judge Hoffman and a Jury,
January 7, 1957,
10:00 o'clock a. m.

The hearing was resumed pursuant to adjournment.

Appearances:

(Same as before.)

384 (The following proceedings were had out of the presence and hearing of the jury.)

The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor, cause on trial.

The Court: Are you ready to discuss the charge?

Mr. Pincham: Yes.

The Court: We will go into chambers and discuss them.

(The following proceedings were had in chambers, out of the presence and hearing of the jury.)

The Court: We will start with the Government's instruction. No. 1, there is no objection?

Mr. Pincham: Not at all.

The Court: No. 2?

Mr. Pincham: No objection.

The Court: No. 3?

Mr. Pincham: Not at all.

The Court: That is what you want me to give?

Mr. Pincham: There is no No. 4.

The Court: No No. 4. No. 5?

Mr. Grady: No. 5 has certain changes which we both agreed to. In the fourth line of Instruction No. 5 of the Government, after "you cannot find" then insert "either of."

The Court: "Either of" after the word "find."

385 Mr. Grady: "Unless from all the evidence you believe," then strike "them," and substitute "him", "to have been proved," then the rest is all right.

The Court: Now, I am going to read it, Mr. Pincham, as amended, and ask your comment.

"The defendants on trial have pleaded not guilty to the first, second and 12th counts of the indictment. This puts the burden of proving the charges in these counts upon the Government, and you cannot find either of the defendants guilty unless from all the evidence, you believe him to have been proved guilty of the offenses charged in this indictment beyond a reasonable doubt."

Mr. Pincham: Yes, I agree to that.

The Court: No. 6?

Mr. Pincham: No. 6 is all right. No objection.

The Court: Any objection to No. 7?

Mr. Pincham: No. 8 is fine.

The Court: Yes, eight is all right.

No. 9?

Mr. Pincham: Nine is all right.

The Court: That is a conventional instruction. No. 10?

Mr. Pincham: Ten is all right.

The Court: Eleven?

386 Mr. Pincham: Eleven is all right.

The Court: Twelve?

Mr. Pincham: Twelve is all right. Thirteen is all right. Fourteen.

The Court: That is the one we give where a defendant testifies?

Mr. Pincham: Yes. I have no objection to that one.

The Court: 15?

Mr. Pincham: That is all right.

The Court: 16?

Mr. Pincham: May I retrogress to 14. I did tender No. 5.

The Court: I have my own. As a matter of fact, when I say I will give what the Government has tendered, I will give it in substance. I don't always give it in the same language. We are not restricted here as we are in the state court.

No. 15 you have agreed to.

Mr. Pincham: Yes.

The Court: No. 16. I go a little farther for the benefit of the defendants. Following there, I say this and it is for your benefit, if you listen to this:

> I should like to add, however, that circumstantial evidence is proof of such facts and circumstances
> 387 surrounding the acts and conduct of the party charged as to exclude every reasonable hypothesis except guilt.

Mr. Pincham: That is fine.

The Court: I will go that far for you.

Mr. Pincham: That is fine.

The Court: I do that in circumstantial evidence instructions, sir.

Now, while I am at that point, you did not submit, Mr. Pincham, as some defense lawyers do, a request that I comment in my charge on the fact that Minor did not testify. You consider whether you want that.

There is a statute of the United States which reads as follows:

"In the trial of all persons charged with the commission of offenses against the United States and in all proceedings in Courts Marshal and courts of inquiry in any state, district, possession or territory, a person shall, at his own request, be a competent witness. His failure to make such a request shall not create any presumption against him."

That is the language of the statute. Then I go on to say:

388 "The fact that the defendant Minor in this case did not make such a request or take the witness stand and testify in his own behalf does not create any presumption against him, and you must not permit that fact to weigh in the slightest degree against the defendant Minor."

Mr. Pincham: I have no objection to that.

The Court: Did you ever hear a better speech for a defendant than that?

Mr. Pincham: I have no objection.

The Court: No. 17.

Mr. Grady: The only change is in the second line. "Tell the Court whether or not these defendants," and add after "defendants," "or either of them."

The Court: Yes.

Mr. Grady: Then as to 18, your Honor.

The Court: I have put a question mark there. I wanted to ask some questions about it. Let us go over it carefully. I am reading from 18:

"The indictment in this case consists of 12 counts, each charging a separate and distinct crime."

Let us stop right there. Nothing has been said up to this point to the jury by the Court or counsel about
389 the number of counts in this indictment. Now, if

I get up there in my chage, and refer to 12 counts, and we do not send the indictment in to the jury room, I am inclined to think it would be error to send the entire indictment into the jury room, or at least prejudicial. I do not think we should refer to a 12-count indictment now. Don't you agree?

Mr. Grady: We sure do. Mr. Pincham and I have agreed to strike the entire first part of the instruction.

The Court: Does that state your agreement?

Mr. Pincham: Yes, sir.

Mr. Grady: Then leave the second paragraph as is?

Mr. Pincham: One thing I notice, 19 covers the same thing. You have an instruction specifically on Count 1 and Count 2.

Mr. Grady: I don't know whether this is necessary. This is a tip-off to the jury now that we are entering into a discussion of the indictment.

The Court: I think Mr. Pincham's point is well taken. I think the Government should withdraw 18.

Mr. Grady: Yes, I will withdraw it.

The Court: Let the record how that Government's request No. 18 is withdrawn. How about 19? Is there any objection?

Mr. Pincham: No.

390 The Court: 19 will be given by agreement.

Mr. Grady: Now, your Honor, as to 20, we have decided the only way we can work this out satisfactorily is to give an identical number 20 for each defendant. That seemed to be about the best we could do. So I wonder if you would strike in your copy of No. 20:

"Before you may find the fendants", strike the "s" on "defendants."

The Court: Strike "and Edward Minor"?

Mr. Grady: Strike "Jessie Maroy", because I have another one here.

The Court: Strike "Jessie Maroy and," the word "and".

All right. "Before you may find the defendant Edward Minor—"

With those changes, it is agreeable?

Mr. Pincham: It is agreeable. However, Judge, also in the third line from the bottom it should be "his" instead of "their," and in the fourth line from the top strike the "s" off of "defendants" again.

The Court: All right. Given in the amended form.

Mr. Grady: Now, Judge, I have 20 (a) which will be for Jessie Maroy.

The Court: All right, it will be given by agreement.

Mr. Pincham: By agreement.

The Court: 21.

Mr. Pincham: Well, Judge, this is purely academic.
391 I won't consume the Court's time in arguing it. I will object to 21.

The Court: You may indicate your objection for the record.

Mr. Pincham: My objection is to 21. It is my opinion there is no evidence of aiding or abetting as to the defendant Jessie Maroy. Therefore, the instruction has to be given on matters which are not supported by evidence.

The Court: Well, if you are right about that, and I don't think you are, then I should let him off.

Mr. Pincham: Yes, right.

The Court: I think with the exception of the conspiracy count, if the Government gets a conviction on one or two, it must be by virtue of Section 2.

Mr. Pincham: No question about that. My other objection, it is my position briefly, if I may make a statement briefly—

The Court: I don't want to limit you. I want to give you everything in this record you are entitled to.

Mr. Pincham: I think in 18-2 it was not the intent of

Congress, in passing 18-2 to have it employed or used where a defendant is indicted for having committed a substantive offense.

The Court: Even when a person is indicted for
392 what you describe as a substantive offense, he is indicted as a principal. It is not necessary that the Government allege they are going to proceed under Section 2. They charge him with those offenses, and it is a violation of the Narcotics Section. There have been many men convicted under that section who could not be convicted unless that section was there.

You cannot indict under 2 because there is no Federal crime charged. Don't you see it says, "Whoever commits an offense against the United States."

Mr. Pincham: Right.

The Court: It is not of itself the statute that creates an offense or defines an offense. It merely defines under what circumstances a person may be found guilty as a principal. What you have said has been raised in the Court of Appeals, and I am sure the Court of Appeals approves of that instruction. If they didn't they would have taken it out of the statute.

Twenty-two is next.

Mr. Pincham: Judge, my position on 22 is instead of setting forth in your own language what the statute says, the statute itself should be set forth, and I think he does somewhere later on in the instructions, and I therefore think it is a duplication.

Mr. Grady: In 19 the statute is set out. My reply
393 would be the jury does not know what prima facie evidence means, and they really don't understand the statute. It spells out what prima facie means.

The Court: Does your office in narcotics cases tender such an instruction?

Mr. Grady: Yes, not exactly in this form, but it is required.

The Court: I will give it over your objection, Mr. Pincham.

Mr. Pincham: That is the objection as to 22?

The Court: Yes. Now, 23.

Mr. Pincham: My objection to that one is it is a duplicate instruction to No. 21.

The Court: You mean aider and abetter

Mr. Pincham: Yes, sir, and my further objection is, as I said before, there is no evidence of aiding and abetting.

The Court: I think that is laying it on a little too thick, Mr. Grady. I think the Court of Appeals might say it is repetition and prejudicial. It picks out the Section 2 as the aider and abetter statute.

Mr. Grady: No, that is not my language.

The Court: I think it is argumentative. It would be considered prejudicial. I will refuse it, or rather I will sustain the objection.

Mr. Grady: Most of this language was taken right 394 from the case.

The Court: Well, I will give it this way:

"Under the statute which I previously read to you, that is to say Section 2."

I won't say "aider and abetter." I will strike that out, and I will say "under the statute." Is that satisfactory?

Mr Grady: Yes, that is satisfactory.

The Court: Then I will give it over your objection, Mr. Pincham.

Mr. Pincham: All right, Judge, fine.

The Court: I suppose 24 is all right?

Mr. Pincham: I have no objection to 24, no, sir.

The Court: 25.

Mr. Grady: 25 will be the same as we had before. If you will strike the "s" on the word "defendants" in the first line—

The Court: And strike out "and Edward Minor"?

Mr. Grady: And strike out "Jessie Maroy and", because I have another one for Maroy. In the fourth line, strike the "s" of "defendants" and then in the third line from the bottom change "they" to "he."

The Court: Your position on 25?

Mr. Pincham: No objection.

The Court: Here is 25-A.

395 Mr. Grady: Your Honor, that is just the same thing for Maroy.

The Court: 25-A is acceptable?

Mr. Pincham: Yes, your Honor, it is.

The Court: 26 is the same aider and abetter statute. "However, the statute which I previously read to you—"

Mr. Pincham: I am objecting to 26.

The Court: I will make it, "However, the statute which I previously read to you, that is Section 2 of Title 18."

Mr. Grady: That is right.

The Court: Very well. Over your objection, I will give it in that form, Mr. Pincham.

Mr. Pincham: What was stricken out?

The Court: I struck the words "aider and abetter" and inserted after the word "statute", "which I previously read to you, that is Section 2 of Title 18."

No. 27?

Mr. Pincham: I have an objection. I think it is repetitious. Down at the bottom, the third line from the bottom, "The law presumes that the narcotics were imported illegally," I don't think that is an accurate statement of the law. The law only presumes that when he has possession.

The Court: "And the burden of rebutting that presumption rests on the defendant or defendants in

396 whose possession they are found," so I think that eliminates your objection. Unless we give an instruction about this, the jury will say what is this about stamps. We will give it over your objection.

Mr. Pincham: All right.

The Court: 29 is pretty much the standard conspiracy language.

Mr. Pincham: That is all right.

The Court: 29, with no objection, I will give it.

Mr. Pincham: There is an objection to 29, particularly to the word "tacitly."

The Court: I thought you said 29 is agreeable.

Mr. Pincham: I was referring to 28.

Mr. Grady: 28 is agreeable. The 12th count charges the defendant—

Mr. Pincham: There is no objection to 28.

The Court: 29.

Mr. Pincham: There is an objection to 29, if your Honor please. I think it is repetitious.

The Court: No, I think it is a definition. I will give 29. I always do in conspiracy cases, over your objection.

Mr. Pincham: Yes, sir.

The Court: 30.

Mr. Pincham: 30 is repetitious.

The Court: No, we have got to tell them—I will 397 give 30 over your objection. 31.

Mr. Grady: 31, your Honor, we were going to add, "The twelfth count of the."

The Court: I again raise the point we are not sending the indictment in.

Mr. Grady: If we decide not to send it in at all, why don't we cut out Counts 3 to 11.

The Court: I don't like to mutilate a Court document.

Mr. Grady: All right, the overt acts—

The Court: The only way is to read to the jury the overt acts. I will send Counts 1, 2 and 12 into the jury room by stipulation of the parties. I won't do it unless the defendants agree to it.

Mr. Pincham: Your Honor, actually I think you have covered Count 1 as setting forth what they are charged with.

The Court: We never said anything about overt acts. In 31 we are dealing with overt acts, and I tell them it is not necessary that all of the overt acts charged were preformed. What are they?

Mr. Grady: It is in the 12th count.

The Court: Up to now we have not detailed to the jury what the overt acts are.

Mr. Grady: I suggest we send the 12th count alone into the jury room.

Mr. Pincham: That would be prejudicial.

398 The Court: They would be wondering why we did not send 1 and 2 in: Can I read them?

Mr. Pincham: All right, read them.

The Court: I will say these overt acts are as follows, reading from the indictment. Is that all right in that form?

Mr. Pincham: Well. Judge, my objection then goes to this instruction because the instruction says all they have to prove is one overt act only. Actually, they must prove the agreement as well.

Mr. Grady: I think the other instruction, your Honor, takes care of that. I think Mr. Pincham wants everything to be included in each instruction.

The Court: I will tell them they have to consider the instructions as a whole. I will give 31 over your objection.

Mr. Pincham: All right. I have no objection to 33.

The Court: 34.

Mr. Pincham: Judge, I am objecting to 34 because in my opinion it constitutes an instruction as to how the jury is to arrive at a verdict.

The Court: No, I have given it often. You took it out of some of the conspiracy cases?

Mr. Grady: I did.

The Court: I will give it over your objection.

399 Mr. Pincham: All right. That is all of yours, isn't it, Mr. Grady?

Mr. Grady: There is one instruction, No. 28. There is one instruction here where I say they are set out in the indictment which you should read. Here it is in instruction No. 28.

The Court: Only in 28?

Mr. Grady: Only in 28. In the second paragraph of the instruction strike out the words "which you should read".

The Court: All right. That is all of the Government's?

Mr. Grady: That is all of the Government's.

The Court: Now, we will come to the defendants' requests. No. 1.

Mr. Grady: No. 1, I have no objection to.

The Court: I will give No. 1. No. 2.

Mr. Grady: No. 2 I think is a duplicate of my 29, and also there are certain objectionable features about it.

In the fourth line of defendants' No. 2: "That the persons committing such acts had previously met and agreed." We have agreed to strike that out. Then the following two lines I think are unclear. Therefore, I would tender my 29 as a substitution.

The Court: In its present form, I will refuse No. 2, and I do it over your objection.

Mr. Pincham: Yes. We had previously struck out
400 the word "and."

The Court: I think I have adequately covered the essence of the crime of conspiracy. No. 3.

Mr. Grady: I object to this, Judge.

The Court: Of course, that is not the law, and Mr. Pincham knows it is not.

Mr. Pincham: Only insofar as Maroy—as to whether

Maroy is a participant in the conspiracy. There the acts of a co-conspirator cannot be relied upon to establish the participation of a third party to that conspiracy.

Mr. Grady: No. 1, I don't think you have any such acts or declarations like that.

The Court: Are you willing to have it refused? I will refuse it over your objection.

Mr. Pincham: All right.

The Court: No. 4.

Mr. Grady: No. 4, no objection.

The Court: Oh, yes. I always give that. No. 5. We already have one on that.

Mr. Pincham: Yes, I will withdraw that.

The Court: No. 6. I never give that instruction.

Mr. Grady: Why verbal admissions of a defendant. I think Mr. Pincham is asking you to comment on the evidence here, and I object to this No. 6, subject to imperfections and mistakes.

401 The Court: I would not think you would want me to give 6.

Mr. Pincham: No. 6?

The Court: Yes. I don't think that that is the law.

Mr. Grady: I don't think it is.

The Court: That purports to show a man cannot be honest when he testifies to a conversation.

Mr. Grady: Particularly in view of the second to the last word, "Satistactory." I don't know what that means.

The Court: I never use the word "satisfactory" in an instruction. I will refuse defendants' request No. 6 over the objection of the defendants.

Mr. Pincham: All right. Now, Judge, No. 7 is withdrawn.

The Court: I have covered that, and more forcefully than you have.

Mr. Grady: No. 8, your Honor, the instruction on cir-

cumstantial evidence. I think it has already been covered by your charge.

The Court: Yes.

Mr. Pincham: I will withraw it.

The Court: Eight is withdrawn.

Mr. Grady: No. 9, your Honor. I think is all right with the exception of two phrases. The fifth line, "probably guilty."

Mr. Pincham: I will strike out the word "probably."

402 Mr. Grady: I don't know what "probably" means. Then the fourth line from the bottom, "convicted on mere probabilities or suspicion."

The Court: You are satisfied that 9 be given with that correction?

Mr. Grady: The Court instructs the jury as a matter of law that you are not to go outside the evidence and seek theories upon which to base conviction of the defendants or either of them.

Mr. Pincham, you are offering to strike that whole phrase?

The Court: Beginning with the word "and".

Mr. Pincham: How far do you want to strike?

Mr. Grady: "If you are merely satisfied that the defendants or either of them is probably guilty of the charges alleged in the indictment or if you have any suspicion," and I would go all the way down to the fifth line from the bottom, and start a new sentence, "The law will not permit one to be convicted on mere probabilities or suspicion."

I don't like that either.

Mr. Pincham: Strike out "mere probabilities," and say "suspicion."

The Court: I won't give that instruction in its present form. If during the luncheon period you can revise it and

get the United States Attorney to agree with your
403 revision, all right. In its present form, I refuse No. 9. No. 10.

Mr. Grady: I object to that one, Judge. I have read the case of United States against Fletcher which Mr. Pincham cited in support of that instruction, and I think that case is very much different from ours. What it involved was the testimony of a dope addict. He was an admitted dope addict. There is no evidence that he was here at the time he testified.

The Court: The man testified he had been using heroin for ten years.

Mr. Grady: Up to June of 1956. I think that case is entirely different from the one we have here.

The Court: The facts may be different. We are not dealing with a difference in facts. We are dealing with the question whether a man who is an admitted user—strike the word "addict"—he was a user for ten years, whether his testimony is subject to close scrutiny. In addition, this fellow is a paid informer. Now, I think the defense is entitled to some instruction about that. I let Mr. Pincham inquire about his use of narcotics. Certainly a man who uses heroin or other narcotics exposes himself to an attack on his credibility. There is no evidence in the record on which I think an instruction ought to be based. Had Mr. Pincham brought in an expert to testify about that—I think he is asking us to reach out and
404 accept a scientific theory which may or may not be true. I think it was encumbent upon him to introduce evidence to that effect if he wants that instruction.

I will go a step further. I have known, and so have you in your professional experience, narcotics users to commit burglary or commit robbery or commit even murder in an effort to get narcotics.

Three out of four of the postal stealings that we have

in the Federal Court are due to the fact a man is stealing checks out of the mails in order to get money with which to buy narcotics. How far shall we go in that kind of an instruction? I will tell you what I would like to do with you, Mr. Pincham. There is definitely evidence in this record that there was an agreement to pay this man. One of the Government witnesses, Gjertsen, testified to that. If during the luncheon intermission, if you can revise 10 and 11, and comment only on the fact that he is a paid informer, I think you are entitled to have that, but I doubt very much whether I can draw a scientific medical conclusion.

Mr. Grady: I am willing to agree with you.

The Court: It is probably true. Why don't you revise 10 and 11?

Mr. Pincham: I will do that.

Mr. Grady: No. 11 I think is withdrawn.

405 Mr. Pincham: I will withdraw 11.

The Court: I will give you a chance to revise 10.

Mr. Pincham: All right.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: Ladies and gentlemen, I am very sorry to keep you waiting in the jury room, but there are in every trial many things that the lawyers have to discuss with the Court out of the presence of the jury. We have finished the work that we have to do out of your presence, and I think I will let you go until two o'clock.

(Thereupon, at 12:30 p. m., a recess was taken until 2:00 p. m., of the same day, January 7, 1957.)

406

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 Cr. 429) * *

Before Judge Hoffman and a Jury,
January 7, 1957,
2:00 o'clock, p. m.

The hearing was resumed pursuant to recess.

Appearances:
(Same as before.)

The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor, cause on trial.

The Court: I have received, I take it, from you, Mr. Pincham, amended instruction No. 12.

Mr. Pincham: Yes, your Honor.

The Court: Have you seen it?

Mr. Grady: I have seen it, yes, your Honor. I have no objection to it.

The Court: All right, let the record show that defendants' request No. 12 will be given with no objection
407 from the Government. Now, you were to prepare a revision on one or two requests. Have you completed your revision?

Mr. Grady: I think we have completed our revision.

The Court: All right, then let the jury be brought in, Mr. Marshal, please.

(The following proceedings were had in the presence and hearing of the jury.)

The Court: All right, Mr. Grady, you may proceed.

Opening Summation On Behalf Of The Government By Mr. Grady. (Not transcribed.)

Summation On Behalf Of The Defendants By Mr. Pincham. (Not transcribed.)

Closing Summation On The Part Of The Government By Mr. Grady. (Not transcribed.)

Charge To The Jury By The Court. (Not transcribed.)

(Thereupon an adjournment was taken until 10:00 a. m. of the following day, January 8, 1957.)

408

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 CR 429) * *

Before Judge Hoffman and a Jury,
January 8, 1957,
10:00 o'clock, a. m.

The hearing resumed pursuant to adjournment.

Appearances:

(Same as before.)

The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor, sealed verdict.

The Court: Will you open the verdict and read it, please.

The Clerk: We, the jury, find the defendants Jessie Maroy and Edward Minor, guilty as charged in Counts 1, 2 and 12 of the indictment.

Signed by Joseph DeVries and eleven other jurors.

The Court: Let the judgment be entered on the verdict.

409 Mr. Pincham: Motion for a new trial, if the Court please.

The Court: Yes, we will set a date for you. Let the defendant Maroy be remanded to the custody of the United States Marshal. The law requires, as you know, Mr. Pincham, that the Court proceed without delay in sentencing, so we will set the sentencing for Friday and disposition, and if thereafter you want a little more time on your motion for a new trial or any other motion you may see fit to make, you may have it. The defendants' motion

for a new trial entered and continued until January 11.

(Thereupon an adjournment was taken until Friday, January 11, 1957, at 10:00 o'clock, a. m.)

410

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 CR 429) * *

Before Judge Hoffman and a Jury,
January 11, 1957,
10:00 o'clock, a. m.

The hearing resumed pursuant to adjournment.

Appearances:

(Same as before.)

The Clerk: 56 CR 429. United States of America versus Jessie Maroy and Edward Minor. Hearing on defendants' motion for a new trial, and disposition.

Argument on motion for a new trial on behalf of the defendants by Mr. Pincham. (Not transcribed.)

The Court: Mr. Clerk, on Count 1 of the indictment, the defendant Jessie Maroy will be committed to the custody of the Attorney General of the United States, or his authorized agent, for imprisonment for a period

411 of four years and fined $500 and cost of prosecution.

The defendant to stand committed until the fine has been paid.

On Count 2 of the indictment, the defendant Jessie Maroy, will be committed to the custody of the Attorney General of the United States or his authorized agent, for imprisonment for a period of four years and fined $500 and costs of prosecution, the defendant to stand committed until the fine has been paid. The sentences on these two counts only to run concurrently and the fines to be cumulative.

On Count 2 of the indictment, the defendant Jessie Maroy will be committed to the custody of the Attorney General of the United States or his authorized agent for imprisonment for a period of four years and fined $500 and cost of prosecution, this sentence to run consecutively as to the sentences under Counts 1 and 2, the fine to be cumulative with fines assessed under Counts 1 and 2, the defendant to stand committed until the fine has been paid.

The Court: Do you have any questions, Mr. Grady?

Mr. Grady: None, your Honor.

The Court: Do you have any questions, Mr. Pincham?

Mr. Pincham: No.

The Court: Both defendants will be remanded to 412 the custody of the United States Marshal.

Mr. Pincham: Will your Honor set the appeal bond?

The Court: I don't think there is any substantial question. I won't fix it.

Mr. Pincham: Very well.

The Court: Under the rule, I don't think I am warranted in setting it.

(The above is all the testimony taken and proceedings had in the above-entitled cause, except as therein noted.

413

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

CERTIFICATE

I hereby certify that the above and foregoing pages, numbered consecutively from 1 to 412, inclusive, constitutes a true and correct transcription of the shorthand notes taken at the hearing of the above-entitled cause before Judge Julius J. Hoffman and a jury, on January 3, 4, 7, 8, and 11, 1957, respectively.

/s/ Everett E. Wenger
E. E. Wenger, Official Court Reporter,
United States District Court,
Northern District of Illinois,
Eastern Division.

March ....., 1957.

56 C.R. 429—U. S. vs. Jessie Maroy and Edward Minor

(Filed Jan 8 1957)

19 DEFENDANTS' INSTRUCTION NO. 1

[The Court instructs the jury that] the knowledge by one that another is doing or contemplates the doing of an illegal act without any aid or assistance by the person possessed of such knowledge in the doing of the act, does not make such person possessed of such knowledge a co-conspirator. It is not the knowledge of the illegal act that makes them conspirators, but an agreement to commit such illegal act. (*Given*)

20 DEFENDANTS' INSTRUCTION NO. 4

The Court instructs the jury as a matter of law, that your verdict in this case is not to be determined alone by the number of witnesses testifying for either side; you must consider the whole evidence together, and you are not to be influenced by the mere number of witnesses testifying for either side. (*Given*)

21 DEFENDANTS' INSTRUCTION NO. 2

The essence of the crime of conspiracy is the intent and the agreement; unlawful acts of individuals no matter how numerous, cannot be called a conspiracy, unless it appears beyond a reasonable doubt that the persons committing such acts had previously met and agreed upon a common purpose contemplating forming unlawfully either as the final object of the agreement or as a means of accompanying it. Therefore, even if you believe from the evidence that lawless acts were committed, still, unless it is proved beyond a reasonable doubt that the defendants came to an agreement to commit such unlawful acts, it is your duty to acquit the defendants. (*Refused*)

22 DEFENDANTS' INSTRUCTION NO. 3

The Court instructs the jury that declarations or statements made by the defendant, Edward Minor, out of the presence of the defendant, Jessie Maroy, are not competent evidence to establish the connection of the defendant, Jessie Maroy with the alleged conspiracy, and that the existence of the conspiracy charged cannot be established against the defendant, Jessie Maroy by evidence of the acts or declaration of Edward Minor done or made in the absence of the defendant, Jessie Maroy. (*Refused*)

23 DEFENDANTS' INSTRUCTION NO. 6

The Court instructs the jury that a statement or statements of a witness as to verbal admissions of a defendant should be received by the jury with great caution, as such evidence is subject to imperfections and mistakes, and it is only when such admissions are deliberately made that the evidence afforded them is of a satisfactory character. (*Refused*)

24 DEFENDANTS' INSTRUCTION NO. 9

[The court instructs the jury as a matter of law] that you are not to go outside the evidence and seek theories upon which to base conviction of the defendants or either of them, and you are further instructed that if you are merely satisfied that the defendants or either of them is probably guilty of the charges alleged in the indictment, or if you have any suspicion that the defendants or either of them is guilty as charged in the indictment, that does not justify your bringing in a verdict of guilty, for the law will not permit one to be convicted on mere probabilities or suspicion. Before you can lawfully convict the defendant or either of them, you must be satisfied that the defendants or either of them is guilty beyond a reasonable doubt. (*Refused*)

25 DEFENDANTS' INSTRUCTION NO. 10

The Court instructs the Jury, that the repeated use of narcotic drugs by a witness, such witness' capacity to observe and to receive accurate impressions, to retain them in his memory, and to correctly relate them and his power and inclination to be truthful, are all subjects which go to the credibility of such witness. (*To be Revised*)

26 DEFENDANTS' INSTRUCTION NO. 12

The Court instructs the Jury that the fact a witness has been or expects to be paid is a matter which you may consider in determining the credibility of such witness and such witness' testimony should be acted upon with caution.

27 GOVERNMENT'S INSTRUCTION NO. 1

It is the duty of the Court to deliver to you instructions for your guidance in the consideration of the evidence and in your deliberations upon this case.

The instructions which the Court will give you, insofar as they pertain to the principles of law applicable to this case, must be accepted by you as a binding control and guide in your consideration of the evidence and in your deliberations.

You must consider each of the statements which I make to you not merely by itself, but as related to all other points covered by the charge. In other words, you must consider my charge as a whole. (*Given*)

28 GOVERNMENT'S INSTRUCTION NO. 2

The responsibility rests upon you to determine the facts of this case, under the law as the Court may give it to you, uninfluenced by any expression of opinion that the Court has made or may hereafter make upon matters of

fact. The Court has not intended at any time during the trial of this case, and does not intend at any time, to express any opinion on any matter of fact, and if the Court has expressed or does express any opinion on any matter of fact, you are at liberty to disregard such opinion, and it is your duty to disregard it, if it is different from your own opinion. (*Given*)

29 GOVERNMENT'S INSTRUCTION NO. 3

This is a criminal case, and the law in such cases is that the defendants come into Court presumed to be innocent, and that presumption protects them until such time, if such time shall come, when the jury shall believe from the evidence in the case, beyond a reasonable doubt, that the defendants are guilty as charged in the indictment or some count thereof. (*Given*)

30 GOVERNMENT'S INSTRUCTION NO. 5

The defendants on trial have pleaded not guilty to the first, second and twelfth counts of the indictment. This puts the burden of proving the charges in these counts upon the Government, and you cannot find either of the defendants guilty unless, from all the evidence, you believe him to have been proved guilty of the offenses charged in this indictment beyond a reasonable doubt. (*Given*)

31 GOVERNMENT'S INSTRUCTION NO. 6

A reasonable doubt is what the term implies, — a doubt founded on reason. It does not mean every conceivable kind of doubt. It does not mean a doubt that may be purely imaginary or fanciful, or one that is merely captious or speculative. It means, simply, an honest doubt that appeals to reason and is founded upon reason. If, after considering all the evidence in the case, you have such a doubt in

your mind as would cause you, or any other reasonably prudent person, to pause or hesitate before acting in a grave transaction of your own life, then you have such a doubt as the law contemplates as a reasonable doubt. (*Given*)

32 GOVERNMENT'S INSTRUCTION NO. 7

The fact that an indictment has been returned is not evidence; nor is the indictment evidence; and neither the indictment nor the return thereof should be considered by you as evidence in determining the guilt of the defendants. The indictment is not to be treated by you as raising any kind of presumption or creating any kind of prejudice against the defendants. The indictment is simply one of the forms or manners, prescribed by law for preferring a charge against an individual, and must be regarded in that light, and in no other light. (*Given*)

33 GOVERNMENT'S INSTRUCTION NO. 8

[The Court instructs the Jury] in determining the guilt or innocence of the defendants of the crimes charged in this cause, that the jury should not allow any prejudice which they feel against such crime, to influence them against the defendants. (*Given*) (Add to prepared Charge.)

34 GOVERNMENT'S INSTRUCTION NO. 9

The guilt of an accused is not to be inferred because the facts proven are consistent with his guilt, but, on the contrary, before there can be a verdict of guilty you must believe from all the evidence, and beyond a reasonable doubt, that the facts proven are inconsistent with his innocence. If two conclusions can reasonably be drawn from the evidence, one of innocence and one of guilt, you should adopt the former. (*Given*)

35 GOVERNMENT'S INSTRUCTION NO. 10

Your verdict in this case must be reached from a consideration of all the evidence in the case, but if any evidence was admitted and was later stricken out, you must wholly disregard such evidence as was stricken out.

(*Given*)

36 GOVERNMENT'S INSTRUCTION NO. 11

If you believe from the evidence that any witness in this case has knowingly and wilfully testified falsely on this trial to any matter material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness, except insofar as it has been corroborated, if you find it has been corroborated by other credible evidence, or by facts and circumstances proved on the trial. (*Given*)

37 GOVERNMENT'S INSTRUCTION NO. 12

During the trial of a lawsuit it often becomes the duty of counsel for the parties to object to questions or to evidence, and I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections against the parties.

(*Given*)

38 GOVERNMENT'S INSTRUCTION NO. 13

You are the sole judges of the credibility and the weight which is to be given to the testimony of the witnesses who have testified upon this trial. In weighing the testimony of each witness you should carefully scrutinize the same; consider all the circumstances under which the witness testified; his demeanor on the stand; the relation which he bears to the Government or the defendant; the manner

in which he might be affected by the verdict; the extent to which he is corroborated or contradicted by other credible evidence, and, in short, any circumstances that tend to throw light upon his credibility. And, applying these tests which I have just stated, it is for you to determine the weight which is to be given to the testimony of each witness. (*Given*)

39 GOVERNMENT'S INSTRUCTION NO. 14

The defendant Jessie Maroy has testified on the witness stand. You have heard his testimony. The fact that he is a defendant does not mean that he cannot tell the truth. You should weigh his testimony by the same rules that you would weigh the testimony of any other witness. But you should keep in mind that he is a defendant in the case, and of course, has an interest in the outcome of this trial. (*Given*)

40 GOVERNMENT'S INSTRUCTION NO. 16

There are two kinds of evidence — direct and circumstantial. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unknown fact is drawn from the existence of known facts. For example, if, when you went to bed at night, you saw the ground was bare of snow, and in the morning when you awakened, you saw the ground covered with snow, while you had not seen the snow fall, nevertheless you can infer from the evidence you see, that it has snowed during the night. That is an illustration of what circumstantial evidence is.

Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and circumstances shown by the evidence in this case are sufficient to convince the jury of the guilt of the defendant, beyond a reasonable doubt, then such evidence is sufficient to authorize the jury to find the defendant guilty. (*Given*)

41 GOVERNMENT'S INSTRUCTION NO. 15

The jury have a right to weigh and examine the evidence closely and carefully in the light of the common knowledge and experience of mankind in determining whether the evidence is reasonable or unreasonable, or probable or improbable, and in determining what weight it is entitled to receive. (*Given*)

42 GOVERNMENT'S INSTRUCTION NO. 17

You have only one duty to perform, and that duty is to tell the Court whether or not these defendants or either of them are or are not guilty as charged in the indictment. Under no circumstances need you consider the matter of punishment. That is a matter committed to the attention to the Court alone. (*Given*) (Add to prepared Charge.)

43 GOVERNMENT'S INSTRUCTION NO. 20 (A)

Before you may find the defendant, Jessie Maroy, guilty of the charge in Count I of the indictment, you must believe from all the evidence and beyond a reasonable doubt that the defendant, Jessie Maroy, at the time and place charged, knowingly, wilfully, and feloniously purchased and

had in his possession the heroin described in that Count, which was not in the original stamped package or from the original stamped package, as charged. (*Given*)

44 GOVERNMENT'S INSTRUCTION NO. 19

Count I of the indictment charges that on or about May 10, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Jessie Maroy and Edward Minor did unlawfully and wilfully purchase from a person or persons whose name or names are unknown to the Grand Jurors, a quantity of a certain narcotic drug, to wit, 200 grains of heroin, which said heroin purchased by said defendants, as aforesaid, was not then and there in the original stamped package nor from the original stamped package; in violation of Section 4704(a), Title 26, United States Code.

The statute of the United States under which the violation charged in Count I of the indictment is brought reads in pertinent part as follows:

> "It shall be unlawful for any person to purchase • • • narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found."

"Narcotic Drugs" are defined to include "any compound manufactured salt derivative or preparation of opium." The Court instructs you that heroin is a derivative of opium, and therefore a "Narcotic Drug" within the meaning of the statute. (*Given*)

45 GOVERNMENT'S INSTRUCTION NO. 20

Before you may find the defendant, Edward Minor, guilty of the charge in Count I of the Indictment, you must believe from all the evidence and beyond a reasonable doubt that said defendant, at the time and place charged, knowingly, wilfully, and feloniously purchased and had in his possession the heroin described in that Count, which was not in the original stamped package nor from the original stamped packed, as charged. (*Given*)

46 GOVERNMENT'S INSTRUCTION NO. 21

There is another statute of the United States which reads as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is punishable as a principal. (*Given*)

47 GOVERNMENT'S INSTRUCTION NO. 22

Under Section 4704(a) of Title 26, United States Code, the statute involved in Count I of the indictment, the absence of appropriate taxpaid stamps for narcotic drugs is prima facie evidence of a violation of that statute by the person in whose possession the narcotics may be found. That is, if a person is found in possession of narcotic drugs which do not bear appropriate taxpaid stamps, the law presumes that he purchased the [said] narcotics, and that when he purchased them they did not bear appropriate

taxpaid stamps. The burden is then placed upon the person in whose possession the unstamped narcotics are found to rebut the presumption that he purchased the narcotics in violation of the statute. (*Given*)

48 GOVERNMENT'S INSTRUCTION NO. 23

You will note that there has been no direct evidence in this case that Jessie Maroy had actual physical possession of narcotics. The Government witnesses have testified only as to physical possession by Edward Minor. Under the Statute (Section 2 of Title 18, United States Code), which I read to you just a moment ago, it is not necessary that each of the defendants have had possession of the narcotics, but only that one of them had possession while the other aided in the illicit transaction to which that possession was incidental.

Therefore, if you should find from all the evidence and beyond a reasonable doubt that Edward Minor had possession of certain narcotics at the time and under the circumstances alleged in Count I of the indictment, and that Jessie Maroy aided, abetted, counselled, commanded, procured or induced Edward Minor to possess such narcotics, then you are authorized to find the defendant Jessie Maroy guilty on Count I of the indictment. (*Given*)

49 GOVERNMENT'S INSTRUCTION NO. 24

Count II of the indictment charges that on or about May 10, 1956, at Chicago, Illinois, in the Northern District of Illinois, Eastern Division, Jessie Maroy and Edward Minor, defendants herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a quantity of a certain narcotic drug, to wit, 200 grains

of heroin, knowing the same to be imported into the United States contrary to law; in violation of Section 174, Title 21, United States Code.

The Statute of the United States under which the violation charged in Count II of the indictment is brought, reads in pertinent part as follows:

> "Whoever fraudulently or knowingly * * * receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment or sale of any * * * narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law * * * shall be [punished].
>
> "Whenever on trial for a violation of this [Statute] the defendant is shown to have or to have had possession of the narcotic drug, possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury."

As I have stated before, the term "Narcotic Drug" includes heroin. (*Given*)

50 GOVERNMENT'S INSTRUCTION NO. 25

Before you may find the defendant, Jessie Maroy guilty of the charge in Count II of the Indictment, you must believe from all the evidence and beyond a reasonable doubt that the defendant at the time and place charged did knowingly and fraudulently receive, conceal, buy, and facilitate the transportation and concealment after importation of a certain narcotic drug, that is, heroin, and that he knew that the same had been imported into the United States contrary to law, all as charged in said Count. (*Given*)

51 GOVERNMENT'S INSTRUCTION NO. 25 (A)

Before you may find the defendant, Jessie Maroy, guilty of the charge in Count II of the indictment, you must believe from all the evidence and beyond a reasonable doubt that the defendant at the time and place charged did knowingly and fraudulently receive, conceal, buy, and facilitate the transportation and concealment after importation of a certain narcotic drug, that is, heroin, and that he knew that the same had been imported into the United States contrary to law, all as charged in said count. (*Given*)

52 GOVERNMENT'S INSTRUCTION NO. 26

Your attention is again directed to the fact that there is no direct evidence in this case that Jessie Maroy had physical possession of narcotic drugs. However, the Statute which I previously read to you, that is, Section 2 of Title 18, applies to the offense alleged in Count II of the indictment as well as to the offense alleged in Count I. Therefore, it is not necessary that both Edward Minor and Jessie Maroy have had possession of the narcotics. It is only necessary that one of the defendants had possession while the other aided in the illicit transaction to which that possession was incidental.

Therefore, if you should find from all the evidence and beyond a reasonable doubt that Edward Minor had possession of certain narcotics at the time and under the circumstances alleged in Count II of the indictment, and that Jessie Maroy aided, abetted, counselled, commanded, procured or induced Edward Minor to possess such narcotics, then you are authorized to find the defendant, Jessie Maroy, guilty on Count II of the indictment. (*Given*)

53 GOVERNMENT'S INSTRUCTION NO. 27

[The Court further instructs you that] If you believe from all the evidence and beyond a reasonable doubt that the defendant Jessie Maroy did aid and abet the defendant Edward Minor in the possession of narcotic drugs as alleged in Count II of the Indictment, you are authorized to find said defendants guilty under said count unless such possession has been explained to your satisfaction; in other words, it is not necessary for the Government to prove that the drugs were unlawfully imported or that the defendants knew them to be unlawfully imported, but possession, or aiding and abetting in the possession of such a narcotic drug places the burden upon the defendant to prove to your satisfaction that they were not unlawfully imported, and that he did not believe them to be unlawfully imported. The law presumes that the narcotics were imported illegally and the burden of rebutting that presumption rests on the defendant or defendants in whose possession they are found. (*Given*)

54 GOVERNMENT'S INSTRUCTION NO. 28

The twelfth count of the indictment charges that the defendants, through a period of time commencing on or about May 10, 1956, and continuing to July 6, 1956, did unlawfully, wilfully, knowingly and feloniously conspire, combine, confederate and agree together, and with other persons unknown to the Grand Jury, to violate the statutes I have read to you regarding Counts I and II of the indictment, and also to violate a statute concerning unlawful sale of narcotic drugs, which read in pertinent part as follows:

> "It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such

article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary (of the Treasury) or his delegate."

It is further alleged in Count XII that to effect the objects of the said conspiracy, the defendants committed certain overt acts, which overt acts are set out in the indictment.

The statute of the United States upon which this twelfth count is based reads, in part, as follows:

"If two or more persons conspire . . . to commit any offense against the United States . . . in any manner or for any purpose . . . and one or more of such persons do any act to effect the object of the conspiracy, each shall be [punished]." (*Given*)

55 GOVERNMENT'S INSTRUCTION NO. 29

The essence of the offense of conspiracy is the unlawful combination, confederation, or agreement to commit an offense against the United States. To "conspire" means to agree, to combine, to confederate.

It is not necessary, to constitute a conspiracy, that two or more persons should meet together and enter into an explicit and formal agreement for an unlawful scheme, or that they should directly by words or in writing, state what the unlawful scheme was to be and the details of the plans by means of which the unlawful combination was to be effected. It is sufficient that two or more persons, in any manner or through any contrivance, positively or tacitly, some to a mutual understanding to accomplish the common and unlawful design charged. (*Given*)

56 GOVERNMENT'S INSTRUCTION NO. 30

It is not necessary, under this conspiracy count, that the Government prove that the defendants committed an

offense—other than conspiracy—against the United States. The charge in this twelfth count is that they conspired so to do. (*Given*)

57 GOVERNMENT'S INSTRUCTION NO. 31

The 12th Count of the indictment charges several overt acts. An overt act is an act done by one or more of the conspirators for the purpose of carrying out, or furthering, the object or objects of the conspiracy.

These overt acts as are as follows:

(Read them from indictment)

It is not necessary that all of the overt acts charged were performed, but it is necessary that at least one of the overt acts charged was done. (*Given*)

58 GOVERNMENT'S INSTRUCTION NO. 33

As I have stated, Count XII of the indictment charges that the defendants conspired together to commit several offenses against the United States. You are instructed that it is not necessary for the Government to show that the defendants conspired to commit all of the offenses alleged in Count XII, so long as the proof establishes beyond a reasonable doubt that they conspired together to commit at least one of the offenses alleged. In other words, a charge of conspiracy to commit several offenses against the United States is sustained by proof of a conspiracy to commit any one of such offenses. (*Given*)

59 GOVERNMENT'S INSTRUCTION NO. 34

In determining whether or not a conspiracy has been proved in this case, you should inquire into what has been done, the movements of the alleged conspirators, their conduct, their accomplishments, if any, together with all of the other facts and circumstances adduced in evidence in the case and bearing upon that issue.

Your inquiry should be: First, did the defendants, conspire together to do the unlawful acts charged in the indictment? And, second, if they did so conspire, did they thereafter, with the view of carrying out the object of such conspiracy, do one thing set forth as an overt act towards such end? If they did so conspire together and take one or more steps, set out as overt acts, toward the accomplishment of that unlawful purpose, the offense of conspiracy is complete. (*Given*)

60

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 CR 429) * *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney come also the defendants Jessie Maroy and Edward Minor in their own proper persons and by their counsel and the Jury heretofore elected, empaneled and sworn herein for the trial of this case also come and render their verdict and upon their oath do say:

> "We, the Jury, find the defendants Jessie Maroy and Edward Minor guilty as charged in counts 1-2 and 12 of the indictment."

and it is

Adjudged that the defendants are guilty as charged and convicted and it is

Ordered that the defendant Jessie Maroy be and he is hereby remanded to the custody of the United States Marshal and that this cause be and the same is hereby continued to January 11, 1957 at 10 A.M. for sentencing and thereupon the defendants move for a new trial which motion is entered and continued to January 11, 1957 at 10 A.M.

61

UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

(Filed Jan. 8, 1957)

We, the Jury, find the defendants Jessie Maroy and Edward Minor guilty as charged in counts 1-2 and 12 of the indictment.

Joseph DeVries, Foreman	John E. Wennerberg
Mrs. Irene Thies	Leola B. Carter
L. Youngberg	Thomas Fairclough
Carl R. Woodman	Gale D. Maxwell
Mamie Rickman	Margaret A. Hill
Marie Volkmar	Mildred L. Hannon

62

UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

(Filed Jan. 11, 1957)

On this 11th day of January, 1957 came the attorney for the government and the defendant appeared in person and [1] by his counsel and the Court being fully advised it is Ordered that the defendant's motions for a new trial and in arrest of judgment be and they are hereby denied

It Is Adjudged that the defendant has been convicted upon his plea of[2] not guilty and a verdict of guilty of the offense of Sections 4704(a) Title 26, Section 174, Title 21 and Section 371, Title 18, United States Code (Unlawful purchase, concealment of heroin after importation into U. S., and conspiracy of same) as charged[3] in counts 1, 2 and 12 of the Indictment and the count having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of[4] Four (4) Years on each of Counts 1, 2 and 12 of the Indictment and besides that he forfeit and pay to the United States of America a fine in the sum of Five Hundred Dollars ($500.00) and the costs of prosecution to be taxed on each of said counts, that said fines shall be cumulative and it is

Further Adjudged that the sentence imposed on count 2 shall run concurrently with the sentence imposed on count 1 and that the sentence imposed on count 12 shall run consecutively to and follow the sentence imposed on counts 1 and 2 and that the defendant[5] shall stand committed until the fines and costs are paid or until he shall be otherwise discharged by due course of law

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ Julius J. Hoffman,
United States District Judge.

The Court recommends commitment to:[6]
January 11, 1957

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[1] Insert "by counsel" or "without counsel; the court advised the defendant of his right to counsel and asked him whether he desired to have counsel appointed by the court, and the defendant thereupon stated that he waived the right to the assistance of counsel."

[2] Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

[3] Insert "in count(s) number " if required.

[4] Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding or unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

[5] Enter any order with respect to suspension and probation.

[6] For use of Court wishing to recommend a particular institution.

63

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

The Court being fully advised it is

Ordered that the motion of defendant Jessie Maroy to fix bond on appeal be and the same is hereby denied.

64

IN THE UNITED STATES DISTRICT COURT

• • (Caption—No. 56 CR 429) • •

NOTICE OF APPEAL

(Filed Jan. 14, 1957)

TO: Hon. Robert Tieken
United States Attorney
U. S. Court House
219 S. Clark Street
Chicago, Illinois

Name and address of Appellant:
Jessie Maroy
3251 West Washington Blvd., Apt 409—4th fl.
Chicago, Illinois

Name and address of attorney for Defendant-Appellants:

R. Eugene Pincham
12 West Garfield Boulevard—Suite 200
DRexel 3-3600—Chicago, Illinois

OFFENSE:

Section 4704A Title 26 United States Code, Section 174 Title 21, United States Code, Section 371, Title 18, United States Code:

On January 11th, 1957, defendant-appellant was sentenced to the custody of the aforesaid Attorney General to be confined in a penitentiary designated by him for a period of four (4) years and fined Five Hundred ($500.00) Dollars and costs for having unlawfully purchased heroin not in or from the original stamped package, Sec. 4704A Title 26 United States Code under Count 1 of the Indictment, to a period of confinement as aforesaid of four years and fined Five Hundred ($500.00) Dollars and costs for having knowingly concealed said narcotic drugs in violation of Section 174 Title 21 United States Code under Count 2 of the Indictment; the sentence under Count 2 to run concurrently with the sentence under Count 1, and the fine of Count 2 to be cumulative with and to the fine of Count 2; to a period of confinement as aforesaid of four years and fined Five Hundred ($500.00) Dollars and costs for having unlawfully conspired to commit offenses against the United States in violation of Section 371 Title 18 United States Code under Count 12 of the Indictment, the sentence of Count 12 to run consecutively to and with the sentences of Counts 1 and 2, and the fine of Count 12 to be cumulative to and with the fines of Counts 1 and 2, and defendant to stand committed until such fine and costs are paid.

Defendant appellant is now confined in the Cook County Jail, 2600 S. California Avenue, Chicago, Illinois.

I, Jessie Maroy, the above named defendant-appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above stated judgment.

/s/ Jessie Maroy

Dated January 14, 1957

66 United States of America } ss:
Northern District of Illinois }

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on January 14, 1957, in accordance with Rule 73(b) of the Federal Rules of Civil and Criminal Procedure, a copy of the foregoing Notice of Appeal was mailed to:

R. Tieken, U. S. Atty.
No. District of Ill., Eastern Div.
U. S. Court House
Chicago, Illinois
W. W. Kipp, Sr., U. S. Marshal
No. District of Ill., Eastern Div.
U. S. Court House
Chicago, Illinois
Kenneth J. Carrick, Clerk
U. S. Court of Appeals
1212 Lake Shore Drive
Chicago, Illinois

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court of Chicago, Illinois, this 14th day of January, 1957.

Roy H. Johnson, Clerk
(Seal) By /s/ Helen S. Oswald,
Deputy Clerk

67

IN THE DISTRICT COURT OF THE UNITED STATES
• • (Caption—No. 56 CR 429) • •

NOTICE OF MOTION

MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE RECORD ON APPEAL
AFFIDAVIT IN SUPPORT THEREOF

R. Eugene Pincham and
Charles B. Evins
12 West Garfield Blvd., Suite 200
DRexel 3-3600
Attorneys for Defendant

68 NOTICE OF MOTION

To: Robert Tieken
United States Attorney for the Northern District of Illinois
219 South Clark Street
Chicago, Illinois

Please Take Notice, that on the 20th day of February, A. D. 1957, at the opening of Court in the forenoon, or as soon thereafter as counsel may be heard, I shall appear before His Honor, Judge Julius J. Hoffman, in the courtroom usually occupied by him in the United States Court House, located at Adams and Clark Streets, Chicago, Illinois, and then and there move the Court to enter an

order extending the time within which to file the record on appeal in the above entitled cause from February 23rd, to and including April 10th, 1957, and in support thereof shall present a motion and affidavit, copies of which are herewith served upon you.

At which time and place you may appear if you see fit.

/s/ R. Eugene Pincham
Attorney for Defendant
12 West Garfield Boulevard
DRexel 3-3600

69 State of Illinois } ss.
County of Cook }

PROOF OF SERVICE

Dallas H. Harper being first duly sworn, on oath, deposes and says, that he served the foregoing Notice of Motion and Motion and Affidavit therein referred to upon Mr. Robert Tieken, United States Attorney, by personally leaving copies of same in his office, located at 219 South Clark Street, Chicago, Illinois, 4th Floor, United States Court House, on the 19th day of February, A.D. 1957, at 3:45 P.M., o'clock.

/s/ Dallas H. Harper

Subscribed and sworn to before me
this 19th day of February, 1957.
(Seal) /s/ Ruby L. Franklin
Notary Public

70 MOTION

Now comes Jessie Maroy, defendant in the above entitled cause, by and through his attorney, R. Eugene Pincham, and moves the Court to enter an order extending the time within which to file the record on appeal in the above entitled cause from February 23, 1957, to and including April 10, 1957.

/s/ R. Eugene Pincham
Attorney for Defendant

71 State of Illinois }
County of Cook } ss.

AFFIDAVIT

R. Eugene Pincham, being first duly sworn, deposes and says that he is the attorney of record for the defendant in the above entitled cause.

That February 23rd., 1957, is the last day in which to file the record on appeal in said cause.

That this affiant has ordered a transcript of the Report of Proceedings had in the trial of said cause, but said transcript has not, as yet, been completed; that if the time within which to filed said record on appeal is extended forty-five (45) days from February 23rd., same will be adequate for completing said transcript.

Further affiant sayeth not.

R. Eugene Pincham
Affiant

Subscribed and sworn to before me
this 19th day of February, 1957.
Ruby L. Franklin
Notary Public

72 UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C R 429) * *

ORDER

This cause coming on to be heard, on motion of defendant for an order extending the time within which to file the record on appeal in the above entitled cause from February 23rd, 1957, to and including April 10, 1957, and the Court being fully advised in the premises;

It Is Hereby Ordered, Adjudged And Decreed that the time within which to file the record on appeal in

the above entitled cause, be and the same is hereby extended from February 23rd., 1957, to and including April 10th, 1957.

Enter J. S. Perry
Judge

Dated: February 20, 1957
At Chicago, Illinois

73 IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 56 C R 429) * *

STIPULATION FOR DIMINUTION OF THE RECORD

It Is Hereby Stipulated by and between Jessie Maroy, defendant-appellant, by and through his attorney, R. Eugene Pincham and the United States of America, plaintiff-appellee, by and through its attorney, Honorable Robert Tieken, pursuant to Rule 12(e) of the Rules of the United States Court of Appeals for the Seventh Circuit, that the Clerk of this Court prepare and transmit to the Clerk of the United States Court of Appeals for the Seventh Circuit, the record on appeal herein, to include the following:

1. Indictment filed July 12th, 1956.
2. Arraignment and plea of Not Guilty of said defendant had on September 27, 1956.
3. Order of January 4, 1957, denying the motion of Jessie Maroy made at the close of the Government's case for judgment of acquittal as to Counts 1, 2 and 12; and the order denying the motion of the defendant, Jessie Maroy, made at the close of all the evidence for Judgment of Acquittal as to Counts 1, 2 and 12 of the Indictment.
4. The verdict of the jury returned January 8, 1957, finding the defendants Jessie Maroy and Edward Minor guilty of Counts 1, 2 and 12 of the Indictment.

74 5. Order of January 11, 1957, denying the motion of the defendant Jessie Maroy for a new trial, and the order overruling the motion of the defendant, Jessie Maroy, in arrestment of judgment, and order committing the defendant, Jessie Maroy, to the custody of the Attorney General and imprisoned for four (4) years on each count, 1, 2 and 12 of the Indictment, and a fine of $500.00 on each of said counts, to be cumulative.

6. The instructions to the jury, filed January 8, 1957.

7. Notice of Appeal of the defendant Jessie Maroy, filed January 14, 1957.

8. Stipulation for Diminution of the Record.

9. Transcript of the trial proceedings, to include the testimony of the following:

(a) John A. Gertsen
(b) Thomas Cross
(c) William Turnbou
(d) Jessie Maroy
(e) Agent Spillane, and Stipulation that if the United States' Chemist was called to testify, he would testify that Government's Exhibits were heroin.
(f) Colloquy between court and counsel on jury instructions.

It Is Further Stipulated by and between the aforesaid parties, by and through their respective counsel, plaintiff-appellee, the United States of America, may include on said record on appeal, such other and further orders, matters and things that said attorney may deem necessary for presentation of said appeal.

R. Eugene Pincham
Attorney for Defendant-Appellant
R. Tieken, U. S. Attorney
Attorney for Plaintiff-Appellee
By: .....

75 United States of America } ss
Northern District of Illinois }

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that the annexed and foregoing are the original papers constituting the record on appeal in the case of United States of America v. Jessie Maroy, et al., No. 56 CR 429:

Indictment—filed July 12, 1956

Order entered September 27, 1956: arraignment and plea of not guilty of defendant

Order entered January 4, 1957: denying motion of defendant Jessie Maroy for judgment of acquittal as to Counts 1, 2 and 12, made at the close of plaintiff's case and again at the close of all the evidence

Order entered January 8, 1957: jury return verdict of guilty as to Counts 1, 2 and 12

Verdict—filed January 8, 1957

Instructions to the jury—filed January 8, 1957

Judgment and Committment entered January 11, 1957, including denial of motions of defendant Jessie Maroy for a new trial and in arrest of judgment

Order entered January 11, 1957: denying motion of defendant Jessie Maroy to fix bond on appeal

Notice of Appeal—filed January 14, 1957

Notice, motion and affidavit in support thereof re extension of time within which to file record on appeal—filed February 20, 1957

Order extending time within which to file record on appeal—entered February 20, 1957

76 Stipulation for diminution of the record on appeal-filed March 18, 1957

Clerk's file copy of the Transcript of Proceedings—filed March 20, 1957 (transmitted separately to the United States Court of Appeals)

filed and entered among the records of the said Court in my office on the dates indicated.

In Testimony Whereof, I have hereunto subscribed my named and affixed the seal of the aforesaid Court at Chicago, Illinois, this 26th day of March, 1957.

Roy H. Johnson
Clerk

By Sarah M. Brown
Deputy Clerk

(Seal)

United States of America }
Northern District of Illinois } ss:

I, Roy H. Johnson, Clerk of the United State District Court for the Northern District of Illinois, do hereby certify and transmit to the United States Court of Appeals, for the Seventh Circuit, as part of the Transcript of Record on Appeal, the Clerk's File copy of the Transcript of Proceedings of the hearing before the Honorable Julius J. Hoffman, District Judge, and a jury on January 3, 4, 7, 8 and 11, respectively, and filed March 20, 1957 in the cause entitled: United States of America, Plaintiff *v.* Jessie May and Edward Miner, Defendants, No. 56 CR 429, among the records of the said Court in my office, in two (2) Volumes, a total of 413 pages.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 26th day of March, 1957.

Roy H. Johnson
Clerk

By .....
Deputy Clerk

(Seal)

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SUPREME COURT, U.S.

FILED
DEC 13 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 661

JESSIE MAROY,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

CHARLES B. EVINS,
12 W. Garfield Blvd., Suite 200,
Chicago 9, Illinois,
DRexel 3-3600,
Attorney for Petitioner.

R. EUGENE PINCHAM,
Of Counsel.

The Scheffer Press, Inc.—ANdover 3-6850

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957.

No.

JESSIE MAROY,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, The Chief Justice and Associate Justices of the Supreme Court of the United States:

The Petitioner, JESSIE MAROY, prays that a Writ of Certiorari be issued to review the decision of the United States Court of Appeals for the Seventh Circuit in the above case.

JUDGMENT AND OPINION OF THE COURTS BELOW.

The judgment of the United States District Court for the Northern District of Illinois, Eastern Division, was entered on January 11, 1957, and is not reported but appears in the record filed with and certified by the Clerk of the Court of Appeals and transmitted herewith.

The opinion the United States Court of Appeals for the Seventh Circuit, affirming said judgment, was filed October 17, 1957, and is not yet reported but is set forth in the Appendix hereto and in the certified copy of the Record.

JURISDICTION.

On November 13, 1957, it was ordered that the petition for rehearing be denied. (These orders appear in the Appendix), This petition is filed within thirty (30) days of the denial of the petition for rehearing in the United States Court of Appeals for the Seventh Circuit. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1), 62 Stat. 928.

QUESTIONS PRESENTED.

1. Where a statute (Section 4704(a), Title 26, U.S.C., 68 Stat. 1004) provides that, "It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; *and the absence of* appropriate tax paid *stamps from narcotic drugs shall be prima facie evidence of a violation* of this subsection *by the person in whose possession the same may be found,*" (Emphasis supplied); and where the indictment charges that, "defendants herein, did unlawfully and wilfully purchase from a person . . . a narcotic drug . . . which said heroin . . . was not then and there in the original stamped package, nor from the original stamped package:" is the statutory provision that possession of the drug is *prima facie* evidence of a violation of the statute by the person in whose possession same may be found, applicable to or operative against a defendant who is not shown to have had possession of the drug; or, can the government rely on the statutory provision that possession of the

drug is *prima facie* evidence of a violation of the statute by the person in whose possession same may be found as to a defendant who is not shown to have had possession of the drug?

2. Where a statute (174T. 21 U.S.C., 65 Stat. 767) provides that "Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported or brought into the United States contrary to law," shall be punished; and further that "*Whenever* on trial for a violation of this subsection *the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction* unless the defendant explains the possession to the satisfaction of the jury" (emphasis added); and the indictment charges that, "defendants herein, did then and there fraudulently and knowingly receive, conceal, buy, and facilitate the transportation and concealment after importation of a narcotic drug, . . . knowing the same to be imported into the United States contrary to law;" is the statutory provision that possession of the drug by the defendant shall be deemed sufficient evidence to authorize conviction of the defendant who is shown to have had possession of the drugs, applicable to, or operative against a defendant who is not shown by the evidence to have had possession of the drugs; or, can the government rely on the statutory provision that possession of the drug by the defendant shall be deemed sufficient evidence to authorize conviction of said defendant, without evidence that said defendant had possession of the drug?

3. Where Jessie Maroy, petitioner herein, was jointly indicted with one Edward Minor for having unlawfully purchased narcotic drugs not in or from the original stamped package in violation of Section 4704(a), Title 26, United States Code, and for having unlawfully concealed said drugs in violation of Section 174, Title 21, United States Code, was it error to submit to the jury instructions on Maroy aiding Minor in the latter's possession of the drug where there was no evidence that Maroy so aided Minor in his possession thereof?

4. Where petitioner is charged with having conspired with one Edward Minor to violate the narcotic laws of the United States in violation of Section 371, Title 18, U.S.C., was it error to refuse to enter judgment of acquittal of petitioner, where the evidence failed to establish the alleged conspiracy?

STATEMENT OF THE CASE.

Count One of the indictment charged that petitioner, JESSIE MAROY, and one Edward Minor on May 10, 1956, at Chicago, Illinois, unlawfully purchased a narcotic drug, which drug was not then and there in the original stamped package, nor from the original stamped package, in violation of Section 4704(a), Title 26, United States Code.

Count Two charged that Petitioner and Edward Minor on May 10, 1956 at Chicago, Illinois knowingly concealed said drugs, knowing same to have been unlawfully imported into the United States in violation of Section 174, Title 21, United States Code.

Count Twelve charged that said parties at said place, from May 10, 1956 to July 6, 1956, conspired to violate the narcotic laws of the United States in violation of Section 371, Title 18, United States Code.

The trial was had before a jury, on January 2, 3, 4, 7 and 8, 1957. Petitioner's motion for judgment of acquittal as to each Count at the close of evidence was denied on January 4, 1957. The jury returned its verdict on January 8, 1957 finding Petitioner and Edward Minor guilty under the aforesaid Counts. Judgments of guilty was entered thereon, and on January 11, 1957, Petitioner was sentenced to imprisonment for a period of four years and fined $500.00 on each Count, the sentence on Counts One and Two concurrent to each other, and consecutive to the sentence on Count Twelve and the fines cumulative, Petitioner to stand committed until fines paid. Petitioner's motion for a new trial was overruled.

EVIDENCE.

The evidence presented by the government is as follows:

On the afternoon of May 10, 1956, in the vicinity of Hoyne and Madison Streets, Agent Gjertsen and Special Employee Thomas L. Cross saw the defendants alight from a Pontiac automobile, having been driven by the Petitioner, Maroy (A. 17-18). Cross waved to Petitioner and Minor and they crossed the street to where Gjertsen and Cross were standing. After greetings were exchanged, Cross stated to Petitioner that he had a friend with him (A. 109). Cross and Petitioner stepped over to the side out of the hearing of Minor and Gjertsen. Cross told Petitioner that his friend wanted to set him up in business to which Petitioner replied, "I don't do no business with no grays (meaning Caucasian), so if you want to talk about it, you have got to see my man." Petitioner and Cross then stepped back into the presence of Minor and Gjertsen. Gjertsen then said to Petitioner that he wanted to do some business and Petitioner told Gjertsen what he had just previously told Cross. Petitioner said nothing to Minor, nor Minor to him, nor did Cross and Gjertsen say anything to Minor in Petitioner's presence. Petitioner left Minor, Cross and Gjertsen and proceeded east to an all night food store located approximately a block away, (A. 56). Cross nor Gjertsen saw Petitioner again that day. Cross had never dealt with nor bought anything from Petitioner (A. 128-123).

Cross, Gjertsen and Minor engaged in conversation in which Cross and Gjertsen agreed to buy narcotics from Minor. Minor left and where he went and to whom, if anyone, he talked from the time he left up to the time they next saw him, Cross and Gjertsen did not know (A. 69). Cross and Gjertsen proceeded to a tavern and about twenty minutes thereafter, Minor entered. Cross

gave Minor $60.00 and Minor gave Cross a package, later identified to be heroin. Minor left the tavern and drove off in a Plymouth automobile.

On May 22, 1956, Cross and Agent Turnbou saw Petitioner, Minor and an unidentified female standing on a corner. Cross went over to where they were and stated to Petitioner that he had a friend with him that wanted to do some business. Petitioner said, "You know I don't do any business. See my man." Cross had no further conversation with Petitioner (A. 162). Minor and Cross had a conversation after which Cross returned to the tavern which Turnbou had entered. Cross and Turnbou, upon leaving the tavern, saw Petitioner and the lady still standing on the corner talking. Minor was driving away alone in a car. Cross and Turnbou proceeded to an alley. Turnbou did not see Petitioner again (A. 214).

Gjertsen saw Minor park the car and enter an apartment building located on Sacramento between Washington and Warren. About ten minutes later, Minor left the building and joined company with Cross and Turnbou in the alley, where Minor delivered a package to Turnbou and Turnbou gave Minor some money (A. 125). Turnbou did not know where Minor was or with whom he spoke up to the time he saw him in the alley.

Minor returned to the automobile and proceeded to the vicinity of Madison Street and parked the car. Minor got out of the car and walked across the street to where Petitioner was. He and Petitioner engaged in conversation. Minor and Petitioner left the vicinity in the automobile.

On July 5, 1956, Gjertsen saw Petitioner and Minor coming out of the building located at 110 N. Wood Street. They entered a Chevrolet automobile and left the vicinity.

Petitioner drove the car (A. 37). At Hoyne Street, Minor got out of the car and proceeded west on foot to the corner of Hoyne. Petitioner left the vicinity, and Petitioner nor the Chevrolet automobile, were seen again that day (A. 100). Minor walked up to Turnbou and engaged him in conversation. Turnbou then entered a restaurant. Minor disappeared on foot. Turnbou remained in the restaurant for about an hour, left and proceeded to his automobile (A. 192), and after entering same, Minor drove up in an old Plymouth. Turnbou got out of his car and entered Minor's car. Minor drove to a tavern which he and Turnbou entered and had refreshments. While there (A. 193), Minor engaged in conversation with a female. Minor, the female and Turnbou left the tavern, and in the Plymouth driven by Minor, proceeded to another tavern, which the three of them entered. Later, Minor and the female left Turnbou in the tavern. When they returned, Turnbou gave Minor some money, and the female gave Turnbou the package. Minor left the tavern alone.

The money that Turnbou gave Minor on the early morning of July 6, 1956 had been given to Turnbou by Gjertsen. Gjertsen had processed it, tested it with phosphorescent powder and listed all the serial numbers (A. 279). When Gjertsen arrested Petitioner about noon on July 6, Gjertsen took some money from Petitioner. Gjertsen processed it with a blue light, checked the serial numbers and returned it to Petitioner. The serial numbers on the bills in Petitioner's possession were not the same serial numbers of the bills that Gjertsen had given to Turnbou (A. 380).

Petitioner's evidence was that:

Petitioner, 41 years of age, resided at 3251 West Washington Boulevard, Chicago (A. 250). He is a partner in

a tavern located at 1612 South Kedsie and had been engaged in this business for about ten months; prior thereto, he owned a tavern at 114 South Paulina, for approximately three and a half years. Prior to becoming engaged in the tavern business at 114 South Paulina, he was employed at the Woodall Industries (A. 251), located at 3500 on Oakton, in Skokie, Illinois. He was a masonite inspector there for three years.

He became engaged in the tavern business at 1612 South Kedzie about March, 1956, when he went out of business at 114 South Paulina. He has never been convicted of any crime.

Petitioner first met Thomas Cross about a year ago in the tavern at 114 South Paulina, at which time he was the owner thereof (A. 252). Cross was using vile words and Petitioner had to put him out of the tavern (A. 253). About three weeks later, Cross was again in the tavern at 114 South Paulina and Petitioner again had to put him out. Petitioner took a knife from Cross, who was again using vile and profane words to a customer (A. 255). Cross was talking loud, using vile and profane words. Petitioner called the police and before the police arrived (A. 256), he told Cross if he would not come back into the tavern, Petitioner would let him go. Petitioner kept the knife and turned Cross loose.

Petitioner has an automobile but has trouble with his left eye and could not see so well out of it, which interferes with his driving ability.

Petitioner knows Edward Minor (A. 257), and has known him for approximately five years. About sixteen months previous, he hired Minor to tend bar at his tavern on Paulina, and Minor was tending bar there when Peti-

tioner went out of business. When he moved the tavern to 1612 South Kedzie, he kept Minor with him as a bar porter (A. 257), at a salary of $60.00 a week. Jack Wood, who resides at 3508 South Prairie Avenue, is his partner in the Kedzie Avenue tavern. Riley, who has offices in the 3600 block on West 16th Street, is the bookkeeper for the tavern. The bookkeeper comes in once a month (A. 258).

Minor drove his automobile because Petitioner did not care to drive too much himself and did not trust himself to drive much.

On May 10, 1956, Petitioner picked up Minor at his home. Minor was living in a hotel in the 1900 block on Warren (A. 259). Petitioner and Minor went to the 1000 block on Madison to pick up some glasses. Minor did the driving. They arrived in the 1000 block on West Madison Street between the hour of 3:30 and 4:00 P.M. When they left there they went to Hoyne and Madison. When Petitioner got out of the car, he saw Tommy Cross. Cross said to Petitioner, "I want to talk to you." (A. 262). Petitioner recognized Cross as being the same individual he had put out of the tavern at 114 S. Paulina Street, and Petitioner said to him, "You know you can't talk with me." Petitioner proceeded to walk to the tavern located on the corner and talked to a man by the name of Jack Flagg, the owner.

Since Minor's employment by Petitioner, Petitioner has given Minor permission to drive his automobile (A. 264). Minor would pick up stock and change and take it to the tavern, usually every day.

When Petitioner left the tavern after talking to Jack Flagg, he went to his car and drove to work.

Petitioner did not observe where Minor went or what he was doing. Petitioner did not again see Cross until January 2, 1957 in Court.

On July 5, 1956, Petitioner saw Minor at or about 8:30 or 9 o'clock. Petitioner had a sister who resided at 111 N. Wood named Mary Smith. On that day, Petitioner went to her apartment. Minor was there also. Minor and Petitioner left Petitioner's sister's home together. Petitioner did not know who Minor had been talking to prior to leaving 111 N. Wood Street, and had no knowledge that Minor had talked to Turnbou or to Cross, or to Gjertsen. Minor left in the car with him. Petitioner went to work. Minor got out of the car at Hoyne and Madison Streets where Minor asked to be dropped off. Petitioner had no knowledge with whom, if anyone, Minor spoke after getting out of the car. Petitioner did not go back and had no knowledge of Minor giving any package to anyone and had no knowledge of Minor having a conversation with Turnbou on May 22 or July 5, 1946, and did not see Turnbou on May 22 or July 5, 1956. He had no knowledge of the matters and things about which the Government's witnesses testified concerning money given to Minor, and packages given by Minor to Cross, Turnbou or Gjertsen.

Petitioner was arrested about 1:30 or 2:00 P.M. on July 6, 1956 by Officer Gjertsen (A. 268). When Gjertsen arrested Petitioner, he asked his name, and Petitioner told him. Gjertsen handcuffed Petitioner and told him he was under arrest. Petitioner asked him what for. Gjertsen said: "Come on, you'll find out," and took Petitioner to his home at 3251 W. Washington. Petitioner did not then know where Minor was. When Gjertsen arrived with Petitioner at his home, Gjertsen asked Petitioner how

much money he had. Petitioner took his money out and asked Gjertsen why he wanted to know. Petitioner had about $30.00. Gjertsen looked through the money and gave it back to him. He said, "Do you want to give me what you have here?" (A. 270). Petitioner said, "I don't know what you are looking for." Gjertsen said: "Well, we will have to search." Gjertsen searched the house and found nothing. After which Gjertsen asked Petitioner, "Do you want to give me whatever you have in your possession?" Petitioner said, "I don't have anything. I don't know what I am arrested for." Gjertsen said, "Well, we don't have any case on you but we will make one." Gjertsen then took Petitioner to the Office of the Bureau of Narcotics.

Petitioner categorically denies having any knowledge or participation in the commission of the alleged offenses (A. 257, 268-271).

REASONS FOR GRANTING THE WRIT.

I.

The importance of this case lies in the fact that the decision of the Court of Appeals for the Seventh Circuit rendered herein is in direct conflict with the decision of the Court of Appeals for the Eighth Circuit rendered in *Willsman* v. *United States,* 286 Fed. 852, that is, in the latter decision, the court holds that the provision of the statute that possession of the drug is *prima facie* evidence of a violation of the statute by the person in whose possession the drugs are found *is not* applicable to, operative against and cannot be invoked against a defendant who is not shown to have had possession of the drug. In the case at bar, however, the court holds that said statutory provision is applicable to a defendant who *is not* shown

to have had possession of the drug. This important question of federal law has not been, but should be, settled by This Court.

II.

The decision rendered herein is in direct conflict with the decision of the Court of Appeals for the Third Circuit rendered in *United States of America* v. *Marie Moses,* 220 Fed. (2) 166, that is, in the latter decision, the court recognized the distinction between acts committed by a defendant in aid of the buyer in the latter's acquisition of drugs and acts committed by a defendant in aid of the seller in the sale of the drugs; and further recognized that aid by a defendant to a buyer is a separate and distinct offense from aid to the seller, and on facts identical and synonomous to the facts of the instant case, held that the defendant's, Marie Moses', conduct was in aid of the buyer in his acquisition of the drugs, and she, therefore, was not guilty of aiding the seller in his disposition of the drugs, for which she was indicted, and reversed the judgment of conviction therefor. In the case at bar, the Court of Appeals for the Seventh Circuit refused to accept the distinction between the offense of aid to the buyer and the offense of aid to the seller; and on facts identical to the facts before the Court of Appeals for the Third Circuit in the *Moses* case, affirmed the judgment of conviction. This important question of federal law has not been, but should be, settled by This Court.

III.

The decision rendered herein is in direct conflict with the decision of the Court of Appeals for the Sixth Circuit rendered in *Morei* v. *United States,* 127 Fed. (2) 827, wherein the defendant, gave an informer the name and address of a source of drugs and pursuant to the defendant's instruction, the informer told the source that the defendant sent him and received drugs from the source. The Court held that such conduct did not bring the defendant within the compass of the crime of aiding the source in his sale of the drugs to the informer and reversed the judgment of conviction therefor. In the case at bar, the Court of Appeals for the Seventh Circuit holds that Petitioner's giving to the informer a source of drugs, from whom the informer obtained drugs, brings Petitioner within the compass of the crime of aiding the source in his sale of the drugs to the informer and affirmed the judgment of conviction therefor. This important question of federal law has not been, but should be, settled by This Court.

IV.

The Court of Appeals below has so far departed from the accepted and usual course of judicial proceedings, and has so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision, in that the Court of Appeals below sanctioned the submission of four repetitious instructions to the jury on aiding and abetting involving and predicated upon a single alleged transaction.

ARGUMENT.

I.

Count One of the indictment alleged a violation of Section 4704(a), Title 26, United States Code, which provides:

> "It shall be unlawful for any person to purchase . . . drugs except in the original stamped package or from the original stamped package, . . . "

To prove a violation of this statute, the Government may resort to direct proof and evidence that a defendant did purchase narcotic drugs and then further prove that said drugs were not in or from the original stamped package.

In addition to the method of proving by direct proof and evidence a violation of this section, The Congress of the United States has provided the Government with another means to prove its violation. In so doing, Congress prescribed the condition which must be shown to exist in order for said additional method of proof to become operative and be invoked. It is provided in the aforementioned section:

> "and the absence of appropriate tax paid stamps from narcotic drugs shall be *prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.*" (Italics added).

Congress thereby prescribed and def ed, by clear, concise, definite and unambiguous language, the person against whom a *prima facie* violation is applicable and can be invoked as "the person in whose possession the same may be found." This is a criminal statute creating

a presumption against an accused. It should, therefore, be strictly construed and not extended beyond its expressed limitation. Its language does not permit it to be invoked against an accused who is not shown to have had possession of the drugs. As to such a defendant, to prove a violation, the Government is required to prove that such defendant purchased drugs which drugs were not in or from the original stamped package.

Count Two alleged a violation of Section 174, Title 21, United States Code, which provides:

> "Whoever . . . receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law . . . shall be imprisoned, etc."

Here again the Government may rely on direct proof and evidence to prove a violation of said section; that is, it may directly prove that an accused received drugs, that said drugs were unlawfully imported and that the accused had knowledge thereof, and here again, Congress has provided the Government with an additional method to prove a violation of the section, and has prescribed and defined the pre-requisites that must be shown to exist before such additional method of proof can become operative. Such conditions are:

> "Whenever on trial for a violation of this subdivision *the defendant is shown to have had possession* of the narcotic drug, *such possession shall be deemed sufficient evidence to authorize conviction.* . . ." (Italics added)

Here, also, Congress has confined and limited the application and operation of the presumption of a violation

of the statute to the person who is shown to have had possession of the drug. In the absence of a showing that the defendant had possession of the drug, the Government was required to prove by direct proof and evidence that said defendant concealed drugs, that said drugs were unlawfully imported and that the defendant had knowledge thereof.

The evidence relied on by the Government to sustain its burden of proving the allegations of Count One is the same evidence relied on to prove the allegations of Count Two. The two counts allege the violation of different statutes, but the drugs referred to in the two counts are the same and the alleged violations arose out of the same alleged transaction. In addition thereto, the two statutes are strikingly similar, in that they both create presumptions of their violation by the person in whose possession drugs are found. It is, therefore, suggested that the argument as to either count is applicable to the other.

The Government offered no evidence that the drugs were not in or from the original stamped package, in violation of 4704(a), or that they were received with knowledge of their unlawful importation in violation of Section 174. It relied solely on the aforementioned presumptions of said statutes of a violation thereof, by the person in whose possession drugs are found, and conceded at page 10 of its brief filed in the court below that the evidence failed to show that Petitioner ever had possession of the drugs. It argued that the showing of possession of the drugs by Minor was sufficient and that Minor's possession was sufficient to invoke the presumption of the statutes as to Petitioner, though the latter is not shown to have had possession.

To this argument and on the aforementioned facts, the Court of Appeals below, at Page 4 of the opinion, held:

"We cannot say the jury was unwarranted in finding that the defendant-appellant, Jessie Maroy, (Petitioner) aided and abetted Minor in the illegal transaction and they were acting in concert in the illegal undertaking, (authorities cited), and that the possession of the heroin by Minor was possession by Maroy as well."

This holding by the court below extends and expands the provisions of the statutes that possession of the drugs is *prima facie* evidence of a violation thereof by the person in whose possession the drugs are found beyond the express limitations defined by Congress. This holding applies and invokes said presumption to and against a defendant who is not shown to have had possession of the drug. Congress has expressly confined the application of the presumption of a violation of the statutes to persons in whose possession the drugs are found. For the court below to extend the application of the presumption beyond said Congressional limitations to persons not specified therein, that is, to persons not shown to have had possession, constitutes and is legislation by judicial decree. This is such a far departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

This holding by the Court of Appeals below is diametrically opposed to the holding by the Court of Appeals for the Eighth Circuit in *Willsman* v. *United States*, 286 Fed. 852. The statute alleged to have been violated in the *Willsman* case, and the statute alleged to have been violated in Count One of the indictment of the case at bar are identical. In the *Willsman* case, Anderson, for the Government, testified that he called at Willsman's home and showed him a letter which had been written by R, who was then confined in jail. The letter requested

Willsman to send morphine to R. by Anderson. Anderson told Willsman that he and R were friends; that R wanted morphine badly and had asked him to get it from Willsman. Willsman replied that he would see. This conversation between Anderson and Willsman occurred in the front hall of Willsman's residence. Willsman went to the back part of the house and in about five minutes returned with his hat and coat on, and said, "I have not got any stuff here, but I will go where we can get some." Enroute, Willsman exercised caution not to be detected and stated to Anderson, "I have got to be . . . careful, because they stuck me for this the other day—for selling this stuff." Upon arriving in front of a saloon, Willsman said to Anderson, "You stand here a minute, and I will be back." Willsman entered a house, returned with Grant and said to Anderson, "Give him your dough, and he will get you the stuff." Anderson expressed a reluctance to depart with his money before receiving his wares, but nevertheless gave Grant the money. Whereupon Willsman stated, "We would not cheat the Doc (R), he is one of the best friends I have got," and turning to Grant, said, "Give him back the dough." Grant handed the money back to Anderson and Willsman said to him, "You walk on up the street, and we will catch you." Anderson complied. About a block away, he saw Willsman and Grant come out of an alley and approach him. Willsman said to Grant, "Give him the stuff." Grant handed the package to Anderson and Willsman said, "Now, give him your dough." Anderson gave Grant the $25.00 and departed.

On these facts, a jury found Willsman and Grant guilty of having unlawfully purchased narcotic drugs not in or from the original stamped package. There was no evidence in the record of a purchase of the drugs by either

Willsman or Grant, and so be it in the case at bar. Nor was there any evidence that the drugs were not in or from the original stamped package. The prosecution relied on the provision of the statute which made possession of the drug *prima facie* evidence of unlawful purchase, as does the prosecution in the case at bar.

On appeal, Willsman contended that there was no evidence in the record that the drugs were found, or ever known to have been in his possession, and that the *prima facie* evidence rule created by possession of the drugs could not be invoked against him to sustain the verdict.

In reversing the judgment of conviction of Willsman, the Court stated, pages 855-856:

> "The testimony of the witness, Anderson, which was in substance as above recited, shows that the unstamped package containing the morphine described in the indictment was in the physical possession of the defendant Grant, and was by Grant delivered to the witness at the time the purchase and sale were consummated. *Clearly the rule of evidence established by the act providing that possession shall be prima facie evidence of the violation of Section One of the act was applicable to the defendant, Grant, but under the facts as above recited, can the rule be invoked against the defendant, Willsman?* So far as the record shows, plaintiff in error never had the package in his hands or under his control. The $25.00 paid by Anderson was given to the defendant, Grant, and so far as the record shows the defendant, Willsman, never received or expected to receive any part of it.
>
> " . . . *The question is: Was the possession of Grant the possession of Willsman also?*
>
> *"The general rule is that possession, to be incriminating, must be personal and exclusive . . .*" (Emphasis ours)

The Court proceeded to hold that possession of the drugs by Grant was not the possession of Willsman and therefore the presumption of a violation of the statute or the *prima facie* rule could not be invoked as to the latter.

It is to be noted that the *Willsman* case was decided in 1923 and was a case of first impression, for at page 855, the Court points out that "no decided cases have been called to our attention, and we have found none directly in point upon the question now being considered . . . " Congress, subsequent to and to avoid the *Willsman* holding has not changed, altered or modified the *prima facie* evidence provision of the statute to include persons not shown to have had possession of drugs, and its inaction is indicative that said holding was in harmony with the congressional intent in the enactment of the provision.

Though cited and relied upon by Petitioner in the Court of Appeals below, its opinion neglects to discuss or attempt to distinguish the *Willsman* case from the case at bar. The Government, however, recognized and appreciated the inconsistency between its position in the instant case and the holding of the *Willsman* case, for at page 21 of its brief filed in the Court of Appeals below, it conceded:

> "An analysis of this case (the *Willsman* case) will show that the holding is in conflict with the decisions of this and most other circuits."

And again at page 23 of said brief, the Government conceded:

> "Had the Court of Appeals for the Eighth Circuit followed the rule announced by this and other circuits, the result in the *Willsman* case obviously would have been different."

It is, therefore, respectfully suggested, that the decision of the Court of Appeals below in the case at bar, and the Court of Appeals for the Eighth Circuit in the *Willsman* case are in diametrical conflict.

II.

To enhance its quality of evidence, the Government relied on Title 18, Section 2, which provides:

> "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> "(b) Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal."

The impropriety of the application of this statute to the facts of the case at bar as submitted to the jury in the form of instructions is hereinafter discussed. The Government contended that Petitioner aided Minor in the latter's possession of the drugs; that Minor's possession was also the possession of Petitioner and that, therefore, the provision of the statutes providing that possession of the drugs is *prima facie* evidence of a violatiion thereof by the person in whose possession same may be found is operative against and applicable to Petitioner. The legal gymnastics of this contention creates and imposes a presumption on a presumption, that is, the presumption that Minor's possession of the drugs was that of Petitioner's, upon which is then based the further presumption, created by the statute, that such possession was unlawful. The Court of Appeals accepted this contention by holding at page 4 of the opinion:

"We cannot say the jury was unwarranted in finding that the defendant-appellant, *Jessie Maroy, aided and abetted Minor in the illegal undertaking,* (authorities cited), *and that the possession of the heroin by Minor was possession by Maroy as well.*" (Italics added).

The law recognizes the distinction between the sale of drugs and the purchase of drugs and makes the two separate and distinct offenses, the former prohibited by Section 4705(a), Title 26, United States Code, and the latter prohibited by Section 4704(a), Title 26, United States Code.

The question is therefore presented: "Did Petitioner aid Minor in the latter's sale of the drugs to Cross and Gjertsen?" Or, "Did Petitioner aid Cross and Gjertsen in their purchase of the drugs from Minor?" The necessity of resolving this question is occasioned by the fact that if the evidence is that Petitioner aided Cross and Gjertsen, an offense for which Petitioner can be indicted, when the instant conviction is for aiding Minor, Petitioner cannot plead said conviction as a bar to subsequent proceedings brought against him for aiding Cross and Gjertsen. In addition thereto, if the evidence is that Petitioner aided Cross and Gjertsen in their acquisition of the drugs from Minor, then Petitioner's conviction for aiding Minor is unsupported by the evidence. Petitioner's aid to Cross and Gjertsen is a separate and distinct offense from aid to Minor. The necessity, therefore, of ascertaining and determining from the evidence whether Petitioner aided Minor in the latter's sale or whether Petitioner aided Cross and Gjertsen in the latter's acquisition is quite apparent.

The Court of Appeals below refused to recognize and accept this distinction. Cross and Gjertsen sought out

Petitioner. They told Petitioner that they wanted to buy drugs and Petitioner is reputed to have told them that he did not deal with Caucasions, and if they wanted drugs to see his man, Minor, which is categorically denied by Petitioner. Petitioner did not introduce them to Minor or tell or advise Minor to make a sale to them. Petitioner said absolutely nothing to Minor, nor did Cross and Gjertsen engage Minor in conversation in Petitioner's presence. Petitioner departed and subsequently, Cross and Gjertsen engaged Minor in conversation in which they agreed to buy, and Minor agreed to sell, drugs to them, the delivery of which was made to them by Minor approximately thirty minutes later in a tavern. Whether Minor acquired the drugs subsequent to the time that the request for them was made, or whether he had them at the time of the request is not revealed by the evidence. When, where, how or from whom Minor acquired the drugs is not shown. Petitioner was not present when the agreement to sell and buy was made and was not present when the drugs and money were transferred in the tavern, and Petitioner received none of the proceeds. The extent of Petitioner's participation, according to the Government's evidence, in the purchase of the drugs by Cross and Gjertsen from Minor is that Petitioner refused to comply with Cross' and Gjertsen's request and his statement to them to see Minor if they wanted to make a purchase. From these facts, who did Petitioner aid? It is quite apparent that Petitioner's participation, committed at the behest and request of Cross and Gjertsen, the purchasers, that is, informing them of a source for the drugs, was aid to them and not aid to Minor, the seller, to whom Petitioner said absolutely nothing and to whom Petitioner offered no aid in his sale.

The opinion of the Court of Appeals below in refusing to recognize that Petitioner's participation in the alleged transaction was in aid of Cross & Gjertsen, the buyers, and holding that said participation was in aid of Minor, the seller, is in direct conflict with the opinion of the Court of Appeals for the Third Circuit, rendered in *United States of America* v. *Marie Moses,* 220 Fed. (2) 166: Marie Moses was visited at her home by two undercover narcotic agents. They told her they wished to purchase some drugs, and inquired whether she knew where such could be obtained. She told them she did not have any, but Cooper was her supplier, and Cooper would be over shortly, and she would be able to arrange for the agents to get some drugs from him. She also told the agents that they might be able to obtain some drugs from a supplier named Mack. Pursuant to the agents' request, she called Mack's home, but was unable to reach him. Subsequent thereto, Cooper arrived at her home and she introduced the agents to Cooper, and told Cooper that the agents wanted to buy some drugs. Cooper asked her if the agents were all right, and she told him they were, and that she had met them on the avenue on other occasions. The agents told Cooper the amount and kind of drugs they wanted, and they talked price with him in the presence and hearing of Marie Moses. She, however, did not participate in the conversation. The agents and Cooper left the house and later that evening Cooper sold the agents some drugs. Cooper was indicted for the sale to the agents under Sections 2553(a) and 2554(a) Title 26, United States Code.

In connection with Moses' participation in the transaction as above set forth, she was indicted under Title 18, Section 2, United States Code and convicted, in that she allegedly abetted and aided Cooper in the sale to the agents.

On appeal, she contended that the law recognized the distinction between the purchase and sale of drugs, both being separate offenses, and that her participation was performed in aid of the purchaser acquiring the drugs and not in aid of the seller's, Cooper's, sale of them and that she therefore was not guilty of aiding Cooper. The Court agreed with her contention and held, at page 168:

> "In charging a person under Section 2 of Title 18, the Government must select and identify the particular 'offense against the United States,' in which the alleged wrong-doer has participated. Such selection makes a difference in this case because the criminal law characteristically analyzes and deals with traffic in contraband in two distinct aspects. The one aspect is the conduct of the seller; the other, the conduct of the buyer. Either or both may be punished, but the significant fact for present purposes is that the law treats selling and buying as distinct and separate offenses. See Section 2553 and 2554 of Title 26, United States Code. Therefore, a participant in a particular transaction must be punished either as a seller or buyer. There is no general offense of participation in the transaction viewed as a whole.
>
> "The government has chosen to indict Marie Moses for her connection with the crime of selling rather than for any connection with buying. The conviction must stand, if at all, on her relation to the seller and his illicit enterprise. Any relation to the buyer actually militates against conviction of the charged offense of criminal complicity in selling.
>
> "*The undisputed facts show the appellant acting solely at the behest of the prospective buyers and not in their interest.* At the buyers' request, she did two things to facilitate their purchase. *She introduced them to the seller and she vouched for their bona fides,* if purchasers of contraband drugs can be so characterized. *That is all that was proved.* There is

nothing to show that she was associated with the enterprise of the seller or that she had any personal or financial interest in bringing trade to him. *Although appellant's conduct was preparatory to the sale, it was not collaborative with the seller. For this reason, the conviction cannot be sustained.*"

"This conclusion is foreshadowed by our decision in *United States* v. *Sawyer*, 210 Fed. (2) 169, where we required the trial judge in his charge to direct the jury's attention to the necessity of deciding whether an intermediary in a narcotics sale was in fact associated with the selling as distinguished from the buying. In the present case, the evidence clearly falls short of establishing such association. True, Sawyer was indicted as a principal seller and appellant is charged as a seller's helper. But the need of identifying defendant with the selling aspect of the transaction is common to both cases." (Italics added)

And at page 169, the Court held:

"Again in has been a general rule under the prohibition acts, nation and state, that one who has acted without interest in the selling, cannot be connected as a seller, even though his conduct may have facilitated an illegal sale."

Though cited, argued and relied on by Petitioner in the Court of Appeals below, the court in its decision neglects to discuss or attempt to distinguish the *Moses* case from the case at bar.

The decision of the Court of Appeals below is in direct conflict with the decision rendered by the Court of Appeals for the Sixth Circuit in *Morei* v. *United States*, 127 Fed. (2) 827:

The defendants in the *Morei* case were charged under Count One of the indictment with illegal purchase of

drugs; under Count Two, alleged sale, and Count Three, unlawful conspiracy to sell and to purchase the drug. The testimony presented by the Government in support of these allegations was that Beach, an informer, went to Dr. Platt, one of the defendants, and told him that he wanted heroin to "soup" race horses; that he gave the doctor the names of certain races in order that the doctor could bet on them; that the heroin was to be used to stimulate them and to win the races in this manner. *It was claimed that Dr. Platt said that he did not have any heroin, but that he did give the informer the name of defendant, Morei, and his address in Cleveland, and told him to see Morei, and tell him that the doctor had sent him, and that "he will take care of you."*

Defendant Evans was employed as a chauffeur for Morei, who could not drive his car because of bad eyesight. Subsequent to the informer requesting a purchase of drugs from Morei, the informer, Morei and Evans met at a drug store. Morei asked Evans to call Youngstown, which he did, and after Evans got the call through, Morei spoke to someone. After the phone conversation, Morei came out and said: "It's all right," and then told Evans to go to Youngstown. Morei then told the informer to return about six o'clock and he would have the stuff. When the informer returned, he and Morei had dinner and later Evans came in and said to Morei, "No score." Morei and Evans left the table and talked. When they returned, Morei said to the informer, "Come with me and we will get it." The drugs were delivered by defendant Russo to Morei on a dark street. Morei and the informer were driven there by Evans, the chauffeur. After Morei had secured the drugs and given them to the informer in the car, Evans drove them downtown and Morei left the car. The informer and Evans then had a conversation

about heroin. The conviction of each defendant was reversed. The Court held that this evidence was insufficient upon which to base a conviction of Dr. Platt for either the unlawful sale or purchase of drugs or conspiracy to sell drugs. The conviction of Evans was reversed on the ground that the evidence was insufficient to sustain it, and that of Morei was reversed on the ground of entrapment. The Court held at pages 831-832:

> "There was no evidence that Dr. Platt planned with the other defendants or conspired directly or indirectly with them, or had any understanding with Morei to buy or sell narcotics. There was no community of scheme between him and the other defendants. They shared in no common intent or plan, nor was there any prearrangement or concert of action. Dr. Platt was paid nothing and it is not claimed that he asked for any remuneration or expected to receive anything from the claimed transaction. Accepting the facts as contended for by the prosecution—which are squarely contradicted by the defendant—*the only thing Dr. Platt did was to give Beach the name of Morei as a man from whom he might secure heroin* to dose horses in order to stimulate them in racing. This is not the purposive association with the venture that, under the evidence in this case, brings Dr. Platt within the compass of the crime of selling or purchasing narcotics, either as a principal, aider and abettor, or accessory before the fact." (Italics added).

Petitioner is reputed to have given Cross and Gjertsen the name of Minor as a person from whom they might and did secure drugs, as Dr. Platt was reputed to have done in the *Morei* case. The conviction therefor of Dr. Platt was reversed; the conviction of Petitioner was affirmed.

In the *Morei* case, the court proceeded to point out at page 831:

"If the criticism for holding that one is guilty of procuring the commission of an offense, is that the offense would not have been commited except for such a person's conduct or revelation of information, it would open a vast field of offenses that have never been comprehended within the common law by aiding, abetting, inducing or procuring."

It is respectfully suggested that the Court of Appeals below has rendered a decision in conflict with the decisions of other Courts of Appeals on the same matter and has decided an important question of federal law which has not been, but should be, settled by this Court.

III.

The trial court, in submitting four instructions to the jury on aiding and abetting, sanctioned by the Court of Appeals below by the affirmance of the judgment of conviction, has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

At the request of the Government, and over the objections of the defendants, the Court submitted, among others, the following instructions to the jury:

"*Government's Instruction No. 21:* (A. 311)

There is another statute of the United States which reads as follows:

(a) Whoever commits an offense against the United States or aids, abets, counsels, induces, or procures its commission, is punishable as a principal.

(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is punishable as a principal."

"Government's Instruction No. 23: (A. 312)

You will note that there has been no direct evidence in this case that Jessie Maroy had actual physical possession of narcotics. The Government witnesses have testified only as to physical possession by Edward Minor. Under the Statute which I read to you just a moment ago, it is not necessary that each of the defendants have had possession of the narcotics, but only that one of them had possession while the other aided in the illicit transaction to which that possession was incidental.

Therefore, if you should find from all the evidence and beyond a reasonable doubt that Edward Minor had possession of certain narcotics at the time and under the circumstances alleged in Count I of the indictment, and that Jessie Maroy aided, abetted, counselled, commanded, procured or induced Edward Minor to possess such narcotics, then you are authorized to find the defendant Jessie Maroy guilty on Count I of the indictment."

"Government's Instruction No. 26: (A. 314)

Your attention is again directed to the fact that there is no direct evidence in this case that Jessie Maroy had physical possession of narcotic drugs. However, the Statute which I previously read to you, *i.e.* Sec. 2, Title 18, applies to the offense alleged in Count II of the indictment as well as to the offense alleged in Count I. Therefore, it is not necessary that both Edward Minor and Jessie Maroy have had possession of the narcotics. It is only necessary that one of the defendants had possession while the other aided in the illicit transaction to which that possession was incidental.

Therefore, if you should find from all the evidence and beyond a reasonable doubt that Edward Minor had possession of certain narcotics at the time and under the circumstances alleged in Count II of the indictment, and that Jessie Maroy aided, abetted, counselled, commanded, procured or induced Edward

Minor to possess such narcotics, then you are authorized to find the defendant, Jessie Maroy, guilty on Count II of the indictment."

"Government's Instruction No. 27: (A. 315)

The Court further instructs you that if you believe from all the evidence and beyond a reasonable doubt that the defendant, Jessie Maroy, did aid and abet the defendant Edward Minor in the possession of narcotic drugs as alleged in Count II of the indictment, you are authorized to find said defendants guilty under said Count unless such possession has been explained to your satisfaction; in other words, it is not necessary for the Government to prove that the drugs were unlawfully imported, but possession, or aiding and abetting in the possession of such a narcotic drug places the burden upon the defendant to prove to your satisfaction that they were not unlawfully imported, and that he did not believe them to be unlawfully imported. The law presumes that the narcotics were imported illegally and the burden of rebutting that presumption rests on the defendant or defendants in whose possession they are found."

These instructions were submitted with relation to Counts I and II of the indictment, which respectively charge the defendants with the unlawful purchase and concealment of drugs. The sole evidence presented in support of these allegations is that on May 10, 1956 on Madison Street at Hoyne, Cross stated to Petitioner that he wanted to do some business, whereupon Petitioner stated that he didn't do business with a gray, and that if he, Cross, wanted to do some business to see his man. Petitioner left and was not seen again. Petitioner said nothing to Minor, nor Minor to Petitioner. Subsequent to Petitioner's departure and in his absence, Minor, Cross and Gjertsen engaged in a conversation, after which Cross

and Gjertsen went to a tavern. Minor's whereabouts were not known. Later Minor transferred a package to Cross in the tavern and left the vicinity in a Plymouth automobile. This is the evidence upon which the complained of instructions were given.

Government's instruction number 21 in part reads, "(b) Whoever causes an act to be done, which if directly performed by him would be an offense against the United States, is punishable as a principal." There is no evidence in this record that Maroy 'caused an act to be done.' Maroy did not talk to Minor, nor Minor to Maroy at any time from the conversation between Minor, Cross and Gjertsen up to the time, nor after, the transfer of the package to Cross in the tavern. It was therefore error to submit Title 18, Section 2, Subsection B to the jury.

Government's instructions numbers 23 and 26 in part provide: "Therefore, if you should find from all the evidence and beyond a reasonable doubt that Edward Minor had possession of certain narcotics at the time . . . and that Jessie Maroy aided, abetted, counselled, commanded, procured or induced Edward Minor to possess such narcotics, then you are authorized to find the defendant, Jessie Maroy guilty. . . ." There is no evidence that Maroy aided or abetted Minor in the latter's possession of the drugs. *Willsman* v. *United States,* 286 Fed. 852; *Moses* v. *United States,* 220 Fed. (2) 166; *Morei* v. *United States,* 127 Fed. (2) 827.

When, where, how or from whom Minor obtained them is not revealed. Maroy said absolutely nothing to Minor. Maroy did not 'aid, abet, counsel, command, induce or procure,' Minor to do anything. When Cross stated to Maroy that he wanted to do some business, Maroy replied to him that he didn't do business with a gray and that if

he wanted to do business, to see Minor, which Cross subsequently did. This revelation by Maroy to Cross as to a source for Cross is not aid to Minor. Quite the contrary. This information revealed by Maroy to Cross constitutes aiding and abetting Cross in the acquisition of drugs by Cross. The conselling by Maroy was to Cross. It was Cross who was advised and informed, and not Minor. Maroy did not tell Minor to, or how, or when or if to sell drugs to Cross. He said nothing to him. The information was submitted to Cross. It is, therefore, respectfully submitted that there is no evidence upon which said instructions are predicated and the Court erred in submitting them to the jury.

Government Instruction number 20A (A. 309-310) is diametrically opposed to and in conflict with Government's instruction number 23 (A. 312). The former tells the jury that "Before you may find the defendant, Jessie Maroy guilty, . . . *you must believe from all the evidence . . . that* the defendant, *Jessie Maroy, . . . had in his possession the* heroin described in that Count. . . . ** Then by Instruction number 23, (A. 312) the court informs the jury that there was no evidence that Maroy had possession of narcotics, but that, " . . . if you should find from all the evidence . . . that *Minor* had possession of narcotics . . . and that Maroy aided . . . Minor to possess such narcotics, then you are authorized to find the defendant Maroy guilty. . . . " Government instruction number 20 A advises the jury that to find Maroy guilty, Maroy must have had possession of the drugs. Then by Government instruction number 23, the jury is told that Maroy is guilty even though he is not shown to have had possession of the drugs. The former provides that a showing of possession of the drugs by Maroy is required and the latter provides that such showing is not required. This conflict of instruc-

tions is confusing to the jury and prejudicial to the defendant.

Government instruction number 22 (A. 311-312) advises the jury that *prima facie* evidence of a violation of the statute is applicable to " . . . the person in whose possession the narcotic may be found. . . . " Government instruction number 26 (A. 314) then tells the jury that it may expand the presumption beyond the statutory limitation to include Maroy in whose possession the drugs were not found. This conflict of these two instructions is apparent.

B.

THE INSTRUCTIONS ARE REPETITIOUS AND PREJUDICIAL.

It is respectfully submitted that the court erred in submitting four instructions on aiding and abetting. Government's instructions numbers 21, 23, 26, and 27, are duplicitous, repetitious, synonymous and practically identical. Their repetition over-emphasized their contents and literally told and instructed the jury to find Maroy guilty of aiding and abetting Minor. When the quality of the Government's evidence is considered it is readily discernible why it desired the over-emphasis which their repetition created. Their repeated submission to the jury was certainly prejudicial.

The defendant is not entitled to a repetition of instructions on presumption of innocence, burden of proof or reasonable doubt. In *Wilson* v. *United States,* 109 Fed. (2) 895, at page 896, the court stated that, '"It is urged that the court erred in refusing to instruct the jury that in order to find appellant guilty of the alleged conspiracy, the jury would have to find that he entered into the conspiracy 'with intent to injure said bank.' But in the main

charge the court fully and explicitly instructed the jury upon the element of intent and *it was not prejudicial to decline to repeat the instruction.*" (Italics added)

The defendant in *Eierman* v. *United States,* 46 Fed. (2) 46, at page 47, objected because the court failed to repeat the expression 'reasonable doubt' in the court's definition of possession to the jury. The Court of Appeals there held that the jury were clearly instructed as to reasonable doubt elsewhere in the charge and "there is no necessity of reiterating the phrase in every charge".

In *United States* v. *Siden,* 293 Fed. 422, page 429, an instruction was given which read in part, "if you are satisfied it did take place, you should convict him." Objection was made to this instruction because it did not again state that the jury must be satisfied beyond a reasonable doubt. A previous charge had instructed the jury on reasonable doubt and it was held that "the court is not obliged to repeat that phrase in connection with every statement made in its charge."

The Government has no more right to a repetition of instructions favorable to the prosecution than has a defendant to a repetition of instructions favorable to his defense. In *People* v. *White,* 365 Ill. 499, 6 N.E. (2) 1015, page 1023, two instructions on circumstantial evidence, in identical language were given at the People's request, upon which the defendant relied as error. The People contended that one instruction was an original and the other a carbon copy and that their submission was accidental. The court held that "Regardless of what may have brought about this unusual situation, it was error to give duplicate instructions upon that subject.".

During the submission of the instructions by counsel to the Court for the latter's approval, the following colloquy occurred: (A. 288)

"The Court: Yes, Now, 23.

"Mr. Pincham: My objection to that one is it is a duplicate instruction to number 21.

"The Court: You mean aider and abetter?

"Mr. Pincham: Yes, sir, and my further objection is, as I said before, there is no evidence of aiding and abetting.

"The Court: *I think that is laying it on a little too thick, Mr. Grady. I think the court of appeals might say it is repetition and prejudicial. It picks out Section 2 as the aider and abetter statute.* (Italics added)

"Mr. Grady: No, that is not my language.

"The Court: I think it is argumentative. It would be considered prejudicial. I will refuse it, or rather I will sustain the objection.

"Mr. Grady: Most of the language was taken right from the case.

"The Court: Well, I will give it this way: 'Under the statute which I previously read to you, that is Section 2.' I won't say 'aider and abetter.' I will strike that out and will say 'under the statute'. Is that satisfactory?

"Mr. Grady: Yes, that is satisfactory.

"The Court: Then I will give it over your objection, Mr. Pincham.

"Mr. Pincham: All right, Judge fine."

Instruction number 23, was then submitted in the language as before set forth. The court expressed the view that it was repetitious and prejudicial and that the court below might very well look with disfavor upon its repeated submission. The court further anticipated the prejudicial over-emphasis its repetition would influentially create when it stated, "I think that is laying it on a little too thick, • • •". In spite of its apparent biased import, the court not only submitted it, but immediately thereafter submitted two additional ones, *i. e.*, number 26 and 27.

Instruction number 26 provides: "*Your attention is again directed to the fact* that there is no direct evidence in this case that Jessie Maroy had physical possession of narcotic drugs. However, *the statute, which I previously read to you, i. e.,* Section 2 of Title 18, *applies* to the offense alleged in count II of the indictment *as well as to the offense alleged in count I.* * * *" The jury had previously been instructed in Instruction number 23 that there was no evidence that Maroy had physical possession of the drugs and the attention of the jury need not have been "again directed to the fact." It was likewise needless to call to the attention of the jury that the court had previously instructed it on Title 18, Section 2, and certainly it was repetitiously prejudicial to reiterate that said section applied "as well as to the offense alleged in count I." The jury had been so instructed in number 23, and it need not have been repeated in number 26. The import of this language emphasized to the jury that they should find Maroy guilty of aiding Minor in the latter's possession of the drugs.

Instruction number 21, recites the statute on aiding and abetting. The first paragraph of instruction number 23:

> "You will note that there has been no direct evidence in this case that Jessie Maroy had actual physical possession of narcotics. The Government witnesses have testified only as to the physical possession by Edward Minor. Under the statute which I read to you just a moment ago, *it is not necessary that each of the defendants have had possession of the narcotics, but only that one of them had possession while the other aided in the illicit transaction to which that possession was incidental.*" (Italics added)

And of instruction number 26:

> "Your attention is again directed to the fact that there is no direct evidence in this case that Jessie

Maroy had physical possession of narcotic drugs. However, the statute which I previously read to you *i. e.* Section 2 of Title 18, applies to the offense alleged in count II of the indictment as well as to the offense alleged in count I. *Therefore it is not necessary that both Edward Minor and Jessie Maroy have had possession of the narcotics. It is only necessary that one of the defendants had possession while the other aided in the illicit transaction to which that possession was incidental.*" (Italics added.)

And of instruction number 27:

"The court further instructs you that *if you believe* from all the evidence and beyond a reasonable doubt that *the defendant Jessie Maroy did aid and abet the defendant Edward Minor* in the possession of narcotics drugs as alleged in count II of the indictment, you are authorized to find said defendants guilty under said count unless such possession has been explained to your satisfaction • • • ". (Italics added)

Each instruction states the same thing in practically the same language. Their prejudicial influence on the jury is apparent. In *People* v. *White,* 308 Ill. 310, 139 N.E. 58, pages 59-60, the defendants were charge with rape. Their defense was consent. They requested numerous instructions defining "force" in the alleged commission of the act, which were refused on the ground that other given instructions adequately submitted the requested definition. They contended for reversal of their conviction that the refusal of their requested instruction was erroneous. The court held that, "neither the state nor the defense is entitled to a repetition of instructions, *and to restate a proposition of law in different language is but a repetition.* (Italics added.)

In *People* v. *Blumenberg,* 271 Ill. 180, 110 N.E. 788, page 791, the court held that "the practice of asking a great

many instructions, stating substantially the same rule of law in slightly varying forms of expression, serves only to cloud the issues, is confusing to the jury, and imposes unnecessary labor on the court." It is respectfully submitted that instructions number 21, 23, 26 and 27, are restatements of the same legal proposition in slightly varying forms of expression and is but a repetition.

Instruction number 27 proceeds to point to the jury that unless the possession of the drugs has been satisfactorily explained to them they should find the defendants guilty, " in other words, it is not necessary for the government to prove that the drugs were unlawfully imported, but possession or aiding and abetting in the possession, of such narcotic drugs places the burden upon the defendant to prove to your satisfaction that they were not unlawfully imported, * * *" This portion of the instruction duplicates instruction number 24, the preceding portion of which duplicates instructions number 21, 23, and 26. Not only was number 27 erroneously submitted for that reason but for the further reason that no evidentiary support for it is found in the record. Minor offered no explanation for having the drugs in his possession. There is no evidence that Maroy had possession. No evidentiary explanation of the possession of the drug having been offered, the court erred in instructing the jury that the burden of satisfactorily explaining their possession was on the defendants.

The submission of the complained of instructions precluded the defendant from receiving a fair and impartial trial, and their prejudicial import corrupted the entire trial proceeding.

To these complaints made of the instructions the Court of Appeals below merely said, at page 56 of the opinion:

> "The instructions, of which complaint is made, correctly state the law and are not prejudicially repeti-

tious and most certainly did not instruct the jury to find Maroy guilty of aiding and abetting as contended by the defendant-appellant."

IV.

The affirmance of the judgment of conviction of Petitioner of having conspired to violate the narcotic laws of the United States by the Court of Appeals below in the complete absence of any evidentiary support therefor is so far a departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

Count Twelve charged the defendants with having conspired to violate the narcotic laws of the United States. In *United States* v. *Silva,* 131 Fed. (2) 247, Mr. Justice Chase stated at page 249 that:

> "There is no magic about a count charging conspiracy. It is simply an accusation of a distinct crime and evidence in support of it must be clear and convincing as to leave no reasonable doubt."

This Court pronounced the dreaded fear and danger to individual liberty in conspiracy prosecutions in *Kotteakos* v. *United States,* 328 U.S. 750, at page 773:

> "When many conspire, they invite mass trial by their conduct. *Even so, the proceedings are exceptional to our tradition and call for use of every safeguard to indivualize each defendant in his relation to the mass.* Wholly different is it with those who join together with only a few, though many others may be doing the same and though some of them may line up with more than one group.
>
> "Criminal they may be, but it is not the criminality of mass conspiracy. They do not invite mass trial by their conduct. Nor does our system tolerate it. That

way lies the drift toward totalitarian institutions. *True, this may be inconvenient to prosecution. But our Government is not one of mere convenience or efficiency. It, too, has a stake, with every citizen in his being afforded our historic individual protection, including those surrounding criminal trials. About them we dare not become careless or complacent when that fashion has become rampant over the earth.*"

At page 774, the court continues:

"* * * *The dangers of transference of guilt from one to another across the line separating conspiracies, subconsciously or otherwise, are so great that no one really can say prejudice or denial of substantial rights has not taken place.* * * *" (Italics added)

The evidence in the case at bar falls short of the requisite proof demanded by the *Silva* case and the Government attempts to sustain the conviction of Maroy by transference of Minor's guilt to him, which was denounced in the *Kotteakos* case. There is no evidence contained in this record of any agreement, combination or confederation between the defendants. On May 15, 1956, and May 22, 1956, when Cross stated to Maroy that he wanted to do business, Maroy told him that he did not engage in such activities. Cross then proceeded to confer with Minor. Minor is not shown to have conferred with Maroy after agreeing to obtain drugs for Cross and before his delivery to him. When, from whom,where or how Minor obtained the drugs is not shown, and Maroy is not shown to have participated in any of the aforementioned phases of Minor's acquisition. At the time of the arrest of Maroy by Gjertsen, Maroy had no drugs in his possession. Gjertsen took Maroy to his place of residence and searched same, which search revealed no drugs, implements of dispensing same, nor any incriminating articles or thing. Nor is Maroy

shown to have participated in the proceeds of the sale. The serial numbers of the money used in the transaction of July 5th, were recorded and the money was tested with phosphorescent powder. Agent Gjertsen testified (A. 379) that he furnished the money used by Agent Turnbou. Agent Turnbou testfied that he gave this money to Minor in the Spot Tavern in the early morning of July 6, 1956 (A. 194). Maroy had not been seen by the Agent since on or about May 22, 1956. When Maroy was arrested by Gjertsen, he tested Maroy's money with a blue light for phosphorescent powder to see if Maroy's hands had contacted the money given to Minor by Turnbou. Had he done so, his hands would have transmitted the phosphorescent powder to the money in his possession at the time of his arrest. Obviously Maroy's money contained no such powder, for otherwise, Gjertsen would have so testified. Gjertsen further examined the serial numbers of Maroy's money to determine if any of the bills in his possession were the same bills which Turnbou had given to Minor. He found that they were not and that Maroy had none of these bills in his possession.

At no time did Maroy direct or advise Minor. As a matter of fact, the record is void of any conversation between them. Maroy said nothing to Minor. The evidence concusively reveals that Minor was acting on his own and for his own personal and private gain and that, at best, Maroy had suspected knowledge of his activities.

In *United States* v. *Day*, 41 Fed. (2) 852, the evidence to prove the conspiracy showed that one defendant was engaged in selling whiskey on the east side of a river, opposite a city. Another defendant operated a launch, and frequently bought whiskey from him and charged $2.00 a gallon for bringing the whiskey across the river and delivering it to another defendant, who in turn, sold it at

retail. At the conclusion of the evidence a motion was made for judgment of acquittal because no conspiracy was shown. In granting the motion, the court held, at page 853:

> "The knowledge by one that another is doing, or contemplates the doing of, such act, without any aid or assistance by such one in the doing of the act, does not make a co-conspirator. Nor does the fact that a number of people, each of whom is engaged in the illegal acts, and is so known to be by each of the other, become co-conspirators, unless some aid or assistance be given by one to another in the illegal act done by such other. It is not a community of crime by several that makes them conspirators, but a community of interests in some crime. Many men may be engaged in committing the same sort of crime, each knowing that the others were so engaged, without becoming conspirators."

None of the requisite evidentiary ingredients of a conspiracy is shown by the record; that is, there is no evidence of any agreement by and beween the defendants, of any conduct by Maroy in furtherance of any common design or interest, or any overt act by Maroy, of any conversation by the defendants in furtherance of a common interest; of any participation in the proceeds from Minor's conduct by his alleged co-conspirator, or of any objects of the alleged conspiracy, to wit: drugs, being found in the possession of Maroy.

The Government bases presumptions upon presumptions. It presumes that there was a conspiracy. It presumes that Maroy participated in it, and that Maroy received a gain therefrom. In reversing a conviction under a conspiracy indictment, the court in *Dahly* v. *United States*, 50 Fed. (2) 37, at page 43, stated:

"• • • even participation in the offense which is the object of the conspiracy does not necessarily prove the participant guilty of conspiracy. The evidence must convince that the defendant did something other than participate in the offense which is the object of the conspiracy. There must in addition thereto, be proof of the unlawful agreement and participation therein, with knowledge of the agreement. Presumption cannot be based upon another presumption, but only upon facts."

The expression and conduct attributed to Maroy are subject equally to two interpretations and impressions, one of innocence and one of guilt. When coupled with his version of what transpired, the latter impression and interpretation is completely nullified. (See *Willsman* v. *United States,* 286 Fed. 852)

In *Morei* v. *United States,* 127 Fed. (2) 827, heretofore discussed, Dr. Platt was convicted of conspiracy to sell and purchase drugs. An informer requested heroin from Dr. Platt to soup race horses and gave him the names of the prospective horses for the doctor to bet on. Dr. Platt told the informer that he did not have any heroin, but gave him the name and address of the defendant Morei as a source thereof and told him to tell Morei that the doctor sent him and that, "he will take care of you." This conviction was reversed on the ground that the aforesaid conduct of Dr. Platt was insufficient upon which to convict him of a conspiracy to sell and purchase drugs. Maroy's conduct is analogous to that of Dr. Platt.

CONCLUSION.

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 11954 SEPTEMBER TERM 1957—SEPTEMBER SESSION 1957

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JESSIE MAROY,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

October 17, 1957

Before SCHNACKENBERG, HASTINGS and PARKINSON, *Circuit Judges.*

PARKINSON, *Circuit Judge.* The defendant-appellant, Jessie Maroy, and his co-defendant below, Edward Minor, were jointly tried before a jury for alleged violations of the narcotics laws. The indictment on which they were tried was in three counts, Count one charged a violation of Title 26 U.S.C.A. §4704(a), Count two charged a violation of Title 21 U.S.C.A. §174, and Count twelve charged a conspiracy in violation of Title 18 U.S.C.A. §371. The jury returned a verdict finding both defendants guilty of all three counts and this appeal by the defendant, Jessie Maroy, followed.

The defendant-appellant insists on reversal for the reason (1) "the evidence is insufficient upon which to sustain a finding of guilty of Maroy of having on May 10, 1956 unlawfully purchased or concealed narcotic drugs, or of

having conspired so to do", (2) "there is no evidence in the record that Maroy aided and abetted Minor in the unlawful purchase or concealment of drugs and the Court's instructions thereon are without evidentiary support and their submission was therefore error", and (3) the instructions on aiding and abetting were repetitious and "prejudicially over-emphasized the charge and instructed the jury to find Maroy guilty thereof."

In the consideration of the sufficiency or insufficiency of the evidence to support the verdict of the jury we cannot weigh the evidence or test the credibility of the witnesses. "The verdict of a jury must be sustained if there is substantial evidence, taking the view most favorable to the Government, to support it." *Glasser* v. *U. S.*, 1942, 315 U.S. 60, 80.

The facts, established by the evidence, viewed in its aspects most favorable to the Government, are that on the afternoon of May 10, 1956, John A. Gjertsen, a Federal Narcotics Agent, and Thomas L. Cross, a special employee of the Narcotics Bureau, were standing together in the vicinity of Hoyne and Madison Streets in Chicago. Cross was a user of heroin. Cross and Gjertsen noticed Maroy, together with his co-defendant, Edward Minor, drive up in a 1956 Pontiac automobile. Maroy was driving and he owned the automobile. Maroy parked his car at the curb on the South side of Madison Street and both Maroy and Minor alighted. Maroy saw Cross and waved to him from across the street. Maroy and Minor then crossed Madison Street to where Cross and Gjertsen were standing and Maroy asked Cross where he had been lately as he hadn't seen him on the streets. Cross replied that following the death of his wife he had moved to the South side of Chicago and, since he had no automobile, he was unable to come to the West side very often. Cross then said to Maroy, "Look, I have got a friend with me." Maroy and Cross then stepped away several paces and Cross said to Maroy, "Look, I have got a friend of mine with me. He wants to put me in business. He don't want to spend much money because he would like to see what I am going to

do first. If I do all right the first time, he said he would do better, you know." Cross told Maroy that he wanted to get "a half piece of stuff", the word "piece" in the narcotics traffic meaning an ounce of heroin, and Maroy replied, "I don't do no business with no grays (meaning Caucasians) anyway. So if you want to talk about it, you have got to see my man." (The record does not so show but counsel for the defendant-appellant informed this court in oral argument that Cross was a negro as were Maroy and Minor and that Gjertsen was a white man.)

Maroy and Cross then rejoined Gjertsen and Minor and Cross introduced Maroy to Gjertsen. Gjertsen told Maroy he wanted "to do some business", which, in the narcotics trade jargon, meant he wanted to buy some heroin, and Maroy replied he wouldn't deal with a gray and if Gjertsen wanted to do business to deal with his man and stated that "his man" was Edward Minor. Maroy then left and walked east on Madison Street. Cross told Minor he wanted to buy "half a piece" and Minor told Cross and Gjertsen to meet him at the bar at Leavitt and Madison Streets. Minor then walked east on Madison Street, the same direction Maroy had gone a few moments earlier. Approximately twenty minutes later, Minor appeared at the bar at Leavitt and Madison and transferred a package containing 200 grains of heroin to Cross and Gjertsen for the sum of $60.00. The package bore no federal tax stamps and the sale was not pursuant to a written order.

On May 22, 1956, Cross was again in the vicinity of Hoyne and Madison Streets in Chicago accompanied by William H. Turnbou, another agent of the Federal Narcotics Bureau. About 4:30 P.M. Maroy and Minor drove up in Maroy's Pontiac. Maroy and Minor got out of the car and Cross went over to Maroy and Minor and told Maroy that he had a friend who "wanted to do some business." A conversation quite similar to the one of May 10, 1956 then took place except Maroy was present throughout and Minor said "Okay. Meet me on Albany and Washington." Minor then got in Maroy's Pontiac and drove to the vicinity of Albany and Washington where he entered

an apartment. Maroy remained on the corner and Cross rejoined Turnbou. Cross and Turnbou drove to Albany and Washington, where they saw Maroy's Pontiac parked. They entered an alley and met Minor. Minor gave Turnbou a package containing 378 grains of heroin and Turnbou paid him $100.00. The package bore no federal tax stamps, nor was the sale pursuant to a written order. Minor then drove Maroy's Pontiac to where Maroy was standing on the corner of Hoyne and Madison. Minor got out of the car and walked over to Maroy. Their hands met and, after a short conversation, they got in Maroy's Pontiac and drove off, with Maroy at the wheel.

About 9:00 P. M. on July 5, 1956, Agent Turnbou had a telephone conversation with Minor. Turnbou told Minor he wanted "to pick up another piece." Minor said, "Okay". They made arrangeemnts to meet at the corner of Hoyne and Madison Streets. Shortly thereafter Maroy and Minor walked out of a building at 111 North Wood Street and proceeded to a parking lot where Maroy's Pontiac was parked. They got into a green Chevrolet and drove directly to Hoyne and Madison with Maroy doing the driving. Turbou was waiting on the corner and Maroy stopped the car east of Hoyne. Minor got out and joined Turnbou. Maroy drove past Minor and Turnbou and disappeared. Thereafter, Minor gave Turnbou a package containing 305 grains of heroin for the sum of $500.00. There were no federal tax stamps on the package and the sale was not pursuant to a written order.

The defendant-appellant contends that there is no evidence that he ever had possession of the heroin. However, the undisputed evidence is that his co-defendant below, Edward Minor, was in his employ, and he was in possession and made the illegal sales to both Gjertsen and Turnbou. The facts are that Cross introduced Maroy to both Gjertsen and Turnbou and when they told him they wanted to buy some heroin he turned them over to his employee, Edward Minor, by whom the illegal delivery was made. We can not say the jury was unwarranted in finding that the defendant-appellant, Jessie Maroy, aided and abetted

Minor in the illegal transaction and they were acting in concert in the illegal undertaking, *U. S.* v. *Chiarelli*, 7 Cir. 1951, 192 F. 2d 528, cert. denied, 342 U.S. 913, and that the possession of the heroin by Minor was possession by Maroy as well. *U. S.* v. *Cohen*, 2 Cir., 1941, 124 F. 2d 164, 165, cert. denied, 315 U.S. 811; *U. S.* v. *Pisano*, 7 Cir., 1951, 193 F. 2d 355. Whether the evidence was sufficient to establish guilt beyond a reasonable doubt, or whether it was equally consistent with innocence or guilt, were matters for the determination of the jury. We hold that there was substantial evidence to support the verdict on all three counts of the indictment and we can not disturb the finding.

The defendant-appellant complains of the trial court giving Government's instrutcions 21, 23, 26 and 27. His objection to instruction 21 was that there was no evidence as to aiding or abetting as to him; to instruction 23 that it was a duplicate of 21; to instruction 26 that he was objecting, though no reason was stated therefor, and to instruction 27 because it was repetitious and that a portion of one sentence "The law presumes that the narcotics were imported illegally", was not an accurate statement of the law because the "law only presumes that when he has possession."

Instruction 21 simply quoted the aiding and abetting statute *ad verbatim*. There was evidence, as we have already pointed out, from which the jury could find that Maroy aided and abetted Minor. There is no merit in defendant's objection to this instruction.

Instruction 23 is a correct statement of the law as applied to Count one of the indictment and is not a duplication of 21 but simply explained to the jury how the statute applied to Count 1 and 26 did the same as to Count 2, and 27 instructed the jury as to the presumption of possession under Title 21 U.S.C.A. §174, but 23, 24 and 27 clearly informed the jury that before they could find the defendant Jessie Maroy guilty under either Count one or Count two they had to first find beyond a reasonable

doubt that he aided and abetted Edward Minor in the possession of the narcotics.

The instructions, of which complaint is made, correctly state the law and are not prejudicially repetitious and most certainly did not instruct the jury to find Maroy guilty of aiding and abetting as contended by the defendant-appellant.

From a careful consideration of the entire record we believe the defendant-appellant was given a fair trial and the jury was properly instructed, without the instructions being prejudicial to him in any manner, and the verdict was supported by substantial evidence.

The judgment is

AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Thursday, October 17, 1957

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. John S. Hastings, Circuit Judge
Hon. W. Lynn Parkinson, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* 11954 v. JESSIE MAROY, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Friday, November 13, 1957

Before

Hon. Elmer J. Schnackenberg, Circuit Judge
Hon. John S. Hastings, Circuit Judge
Hon. W. Lynn Parkinson, Circuit Judge

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. JESSIE MAROY, *Defendant-Appellant.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

11954

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby, DENIED.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago 10, Illinois

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing pages contain a true copy of the Appendix, filed on July 15, 1957, the Opinion of the Court, filed October 17, 1957, the Judgment, entered October 17, 1957, and the order denying Petition for Rehearing, entered November 13, 1957, in Cause No. 11954, United States of America, Plaintiff-Appellee vs. Jessie Maroy, Defendant-Appellant, as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 26th day of November A. D. 1957.

Kenneth J. Carrick
Clerk of the United States Court of Appeals for the Seventh Circuit.
By: R. Hays Blanchard
Chief Deputy Clerk.

[Seal]

SUPREME COURT, U.S.

No. 661

Office - Supreme Court, U.S.
FILED
JAN 13 1958
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957

JESSIE MAROY, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR THE UNITED STATES IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 661

JESSIE MAROY, *Petitioner*

v.

UNITED STATES OF AMERICA

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1-6) is reported at 248 F. 2d 663.

JURISDICTION

The judgment of the Court of Appeals was entered on October [illegible], 1957 (Pet. App. 7), and a petition for rehearing was denied on November 13, 1957 (Pet. App. 8). The petition for a writ of certiorari was filed on December 13, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether there was sufficient evidence that petitioner aided and abetted his co-defendant in the illegal purchase and concealment of heroin.

2. Whether the instructions on aiding and abetting were prejudicially repetitious and inconsistent.

3. Whether the evidence was sufficient to support petitioner's conviction for conspiracy to violate narcotics laws.

STATUTES INVOLVED

26 U.S.C. (1952 Ed., Supp. II) 4704(a), 68A Stat. 550, provides:

> (a) General Requirement.—It shall be unlawful for any person to purchase, sell, dispense, or distribute narcotic drugs except in the original stamped package or from the original stamped package; and the absence of appropriate taxpaid stamps from narcotic drugs shall be prima facie evidence of a violation of this subsection by the person in whose possession the same may be found.

21 U.S.C. (1952 Ed.) 174, 65 Stat. 767, provides:

> Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be fined not more than $2,000 and imprisoned not less than two or more than five years. * * *

Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

18 U.S.C. 2, 65 Stat. 717, provides:

(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

STATEMENT

Petitioner and his co-defendant Minor were tried on counts 1, 2, and 12 of an indictment returned in the United States District Court for the Northern District of Illinois. Count 1 charged the unlawful purchase of heroin on May 10, 1956, in violation of 26 U.S.C. 4704 (a) (*supra*, p. 2); count 2 charged unlawful concealment of the same heroin on that date, in violation of 21 U.S.C. 174 (*supra*, pp. 2-3); and count 12 charged a conspiracy to violate the narcotics laws (R. 7, 8, 11-12). The jury found the defendants guilty on all three counts (R. 298, 319). Petitioner was sentenced to four years' imprisonment on each of counts 1, 2, and 12 with cumulative fines of $500 on each count. The sentence on count 2 was to run concurrently with that on count 1, and the sentence on count 12 was to run consecutively to that under counts 1 and 2 (R. 299-300, 319-320).

Pertinent evidence supporting the convictions may be summarized as follows:

On May 10, 1956, narcotics agent Gjertsen and special employee Cross, a heroin user, were standing in the vicinity of Hoyne and Madison Streets in Chicago (R. 17-18, 107-108, 125). Petitioner drove his 1956 Pontiac sedan to this intersection, and he and defendant Minor alighted (R. 17-18, 220-221, 222-223). Petitioner waved to Cross, and then petitioner and Minor walked toward Cross and Gjertsen (R. 18, 223). After stepping away from the others, Cross said to petitioner, "Look, I have got a friend of mine with me. He wants to put me in business. He don't want to spend too much money because he would like to see what I am going to do first. If I do all right the first time, he said he would do better, you know" (R. 109). Cross told petitioner he wanted "a half a piece of stuff", which meant half an ounce of heroin in narcotics traffic jargon (R. 141, 211). Petitioner replied, "I don't do no business on the street. Besides, I don't do no business with grays [Caucasians][1] anyway. So if you want to talk about it, you have got to see my man" (R. 109, 20). When petitioner and Cross rejoined agent Gjertsen and Minor, Cross introduced petitioner to Gjertsen, who shook hands with petitioner and Minor (R. 19, 109). Gjertsen told petitioner that he "wished to do some business," meaning that he wanted to purchase some heroin (R. 19-20, 110). Petitioner answered, "I don't handle the business, and I won't deal with a gray. If you want to do business you deal with my man." Petitioner pointed to Minor and called him "my man"

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[1] Gjertsen was a white man and petitioner, Minor, and Cross were Negroes (Pet. App. 3).

(R. 20-21, 52-53, 110-111). Petitioner left the group and walked east on Madison Street (R. 21, 54). When Cross informed Minor that he wanted to buy "half a piece," Minor told Cross and Gjertsen to meet him at the bar on Levitt and Madison Streets (R. 21, 22, 111). Minor then walked east on Madison Street, the same direction in which petitioner had gone a few moments earlier (R. 58). About twenty minutes later, Minor appeared at the designated bar and transferred a package containing 200 grains of heroin to Cross and Gjertsen for $60 (R. 23, 24, 25-27, 112-113, 244-245). There were no federal tax stamps on the package, and the sale was not pursuant to a written order (R. 28-29, 113-114).

On May 22, 1956, Cross was again in the vicinity of Hoyne and Madison Streets, this time with narcotics agent Turnbou. At about 4:30 p.m., they saw petitioner and Minor drive up in petitioner's Pontiac (R. 115-116, 170-171). Cross walked to where petitioner and Minor were standing, and told petitioner he had a friend with him who "wanted to do some business." Petitioner replied, "You know I don't do no business. See my man," and nodded toward Minor (R. 117-118, 172). Cross told Minor in petitioner's presence that he (Cross) had a friend with him who "wanted to get an ounce of stuff." When Minor asked who the friend was, Cross answered, "He is all right. He is over there at the bar, you know" (R. 118). Minor then crossed the street to inspect the automobile which Cross stated that he and Turnbou were using. Upon Minor's return, he said to Cross, "Okay. Meet me on Albany and Washington." All of this conversation occurred in petitioner's presence (R. 118-120). Minor drove petitioner's Pontiac to the vicinity of Albany and

Washington, where he entered an apartment. Petitioner remained on the corner, and Cross rejoined Turnbou (R. 120, 32, 225). Cross and Turnbou drove to Albany and Washington Streets where they saw petitioner's Pontiac parked (R. 120, 173-174). After entering an alley, they met Minor, who delivered to Turnbou a package containing heroin for which Turnbou paid $100. The package bore no federal tax stamps, and the sale was not pursuant to a written order (R. 174-176, 32-36, 226, 245). Minor drove petitioner's Pontiac back to Hoyne and Madison Streets, where petitioner was still standing. After Minor walked toward petitioner, their hands met and they had a short conversation. They they drove off in the Pontiac with petitioner at the wheel (R. 33, 226).

On July 5, 1956 at about 10:00 p.m., agent Turnbou, after a telephone conversation with Minor arranging another heroin purchase, went to the vicinity of Madison and Hoyne (R. 180, 209-211). Shortly thereafter, petitioner and Minor left a building at 111 North Wood Street and petitioner drove a Chevrolet to Madison and Hoyne. After petitioner stopped the car, Minor alighted and joined Turnbou, and then petitioner drove away (R. 36-37, 227-228). Later, in a tavern, Minor delivered to Turnbou a package containing 305 grains of heroin in exchange for $500. There were no federal tax stamps on this package and the sale was not pursuant to a written order (R. 191-196, 246).

Petitioner's testimony on his own behalf conflicted with the government's evidence. As to the May 10, 1956 transaction, petitioner stated that he did not wave to Cross, and told Cross that he could not talk to him (R. 261, 262). Petitioner denied having a conversation

with Gjertsen. He stated that he met Gjertsen for the first time on July 6, 1956, the date of his (petitioner's) arrest (R. 261, 265). Regarding the May 22, 1956 incident, petitioner denied that he saw or had a conversation with Cross (R. 265); and denied knowledge of any narcotics transactions which Minor had with Cross or Turnbou (R. 268). As to the July 5, 1956 transaction, petitioner stated that he had no knowledge that Minor had talked to or had seen Turnbou (R. 267, 268).

The judge's charge to the jury is not transcribed (see R. 298), but in the discussion which preceded the charge the judge noted that the evidence against petitioner would permit his conviction only as an aider and abettor (R. 288). He accordingly gave four of the government's instructions (Nos. 21, 23, 26 and 27) on aiding and abetting (R. 311-315).

ARGUMENT

1. Petitioner challenges his conviction under counts 1 and 2 of the indictment (charging unlawful purchase and concealment of heroin by petitioner and Minor) on the ground that the government's proof failed to show that he had physical possession of the narcotics. It is not necessary, however, that petitioner should have had actual physical possession so long as he aided and abetted Minor (who admittedly had physical possession) in the unlawful purchase and concealment of the narcotics. The jury was fully justified in drawing the inference that (in the words of the aider-and-abettor statute, 18 U.S.C. 2, supra, p. 3) petitioner not merely aided and counseled, but also procured and commanded, the commission of the crime. It is apparent from the evidence that, when Cross and Gjertsen

made overtures to purchase narcotics on May 10, 1956, petitioner and Minor already had heroin on hand and in their control, ready and available for disposition. Moreover, petitioner told the customers to deal with "my man" (Minor). He then walked away, the indication being that Minor could proceed with the sale. And, in fact, delivery was concluded promptly thereafter. See the Statement, *supra*, pp. 4-5.

Petitioner's reliance (Pet. 18-22) upon *Willsman* v. *United States*, 286 Fed. 852 (C.A. 8), is misplaced. There, the evidence was that Willsman never did have the narcotics "under his control" and that he had to travel 14 or 15 blocks as a mere go-between to get Grant who had physical possession of the drugs (286 Fed. at 855, 856). In the instant case, however, both Minor and petitioner were present together initially, and the circumstances strongly supported the inference that both had control of the narcotics. Compare *United States* v. *Cohen*, 124 F. 2d 164, 165 (C.A. 2), certiorari denied sub nom. *Bernstein* v. *United States*, 315 U.S. 811; *United States* v. *Chiarelli*, 192 F. 2d 528, 530-531 (C.A. 7), certiorari denied, 342 U.S. 913; *Alexander* v. *United States*, 241 F. 2d 351 (C.A. 8), certiorari denied, 354 U.S. 940; *Rosenberg* v. *United States*, 13 F. 2d 369, 370 (C.A. 9).

There is no foundation for the argument that petitioner was not aiding Minor, the seller, but rather Cross and Gjertsen, the purchasers, by merely informing the latter of a source for the narcotics. Petitioner made no such claim or suggestion when he took the stand as a witness in his own behalf. And his words and conduct in the presence of the government's witnesses are consistent only with the view that Minor looked to petitioner for direction. There is thus no

inconsistency between this case and *United States* v. *Moses*, 220 F. 2d 116 (C.A. 3), where it was held that an agent for the purchaser had not violated the statute.[2]

2. Petitioner's complaint (Pet. 34-40) that certain instructions (Nos. 20(A), 21, 22, 23, 26, and 27; R. 309, 311-312, 314-315) were prejudicially repetitious and inconsistent is without substance.

Instruction No. 21 merely recites the applicable aider-and-abettor statute, 18 U.S.C. 2 (*supra*, p. 3). No. 23 relates this statute to the unlawful-purchase statute under count 1, and states that petitioner may be held guilty if he aided Minor in the unlawful possession of the narcotics. No. 20(A), given by "agreement" of petitioner's counsel (R. 286), is not inconsistent with No. 23, since the net effect of reading them together is to make it possible for the jury to find "from all the evidence" that petitioner had possession by reason of his aiding and abetting Minor, even though it may have been constructive, rather than physical, possession.

Instructions Nos. 26 and 27 are not repetitious of the preceding instructions, since they both relate to count 2, a separate offense from that involved in count 1. No. 26 relates the aider-and-abettor statute to the unlawful-concealment statute under count 2, and states that petitioner may be held guilty if he aided Minor in the unlawful possession of the narcotics.[3] No. 27 merely recites the possibility that even if petitioner did

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[2] The same is true of *Morei* v. *United States*, 127 F. 2d 827 (C. A. 6), in which the defendant Platt merely informed the purchaser of narcotics of a source in another city, Platt having had no criminal connection with the source.

[3] Instruction No. 22 is not inconsistent with No. 26 (see Pet. 35), since it relates to count 1, while No. 26 relates to count 2.

aid and abet Minor in possession of the narcotics, as alleged in count 2, he could overcome the unfavorable presumption arising from possession by proving to the jury's satisfaction that the narcotics "were not unlawfully imported, and that he did not believe them to be unlawfully imported" (R. 315). Cf. *Gallegos* v. *United States,* 237 F. 2d 694, 697-698 (C.A. 10).

Nowhere in the charge is there an improper peremptory direction that the jury must find that petitioner aided and abetted Minor in illegal possession of the narcotics. Both instructions Nos. 23 and 26 require that such a finding shall be based upon "all the evidence and beyond a reasonable doubt"; and the government's requested instructions Nos. 3, 5, and 6 (R. 305) also cover the accused's presumption of innocence and the necessity that guilt be found beyond a reasonable doubt.

3. Contrary to petitioner's contention (Pet. 41-45), the evidence was sufficient to sustain his conviction for conspiracy to violate the narcotics laws as charged in count 12 (R. 11-12).

We have already alluded to the events of May 10, 1956 (*supra,* pp. 7-8). Further evidence of a conspiracy and illegal agreement is provided by the May 22, 1956 incident, when petitioner referred Cross to his "man" Minor, and Cross, in petitioner's presence, stated that his friend "wanted to get an ounce of stuff." After checking upon the friend (Turnbou), Minor arranged a meeting at which the sale to Turnbou was consummated. Minor used petitioner's automobile in expedi[illegible]ng this sale, and, upon Minor's return, the hands

of the two defendants met and they drove away in petitioner's automobile (see the Statement, *supra*, pp. 5-6).[4]

The fact that the evidence was circumstantial does not mean that it was insufficient to establish participation in a criminal conspiracy. Cf. *Glasser* v. *United States*, 315 U.S. 60, 80. The jury was specifically told (defendant's instruction No. 1 (R. 302)) that "[i]t is not the knowledge of the illegal act that makes [persons] conspirators, but an agreement to commit such illegal act." The jury also received correct instructions as to circumstantial evidence and the various aspects of conspiracy (R. 308-309, 315-318).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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JANUARY 1958.

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[4] The evidence as to the July 5, 1956, sale to Turnbou (see the Statement, *supra*, p. 6) is not as strong as in the two preceding incidents, but it also discloses a close relationship of petitioner's activities with the illicit sale.

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